parts 121 and 125 will not incur significant economic costs.

Federalism Implications

The regulations contained herein do not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

Because the regulations contained herein are expected to result only in negligible costs, the FAA has determined that this rule is not major as defined in Executive Order 12291. Because this is an issue that has not prompted a great deal of public concern, this rule is not considered to be significant as defined in Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). In addition, since there are no small entities affected by this rule, it is certified under the criteria of the Regulatory Flexibility Act that this rule, at promulgation, will not have a significant economic impact, positive or negative, on a substantial number of small entities.

List of Subjects

14 CFR Part 25

Aircraft, Aviation safety, Safety.

14 CFR Part 121

Aircraft, Airplanes, Airworthiness, Pilots.

14 CFR Part 125

Aviation safety, Safety, Air carriers, Aircraft pilots, Airplanes, Pilots.

The Amendment

Accordingly, parts 25, 121, and 125 of the Federal Aviation Regulations (FAR) (14 CFR parts 25, 121, and 125) are amended as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for part 25 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, 1430; 49 U.S.C. 106(g).

2. By amending § 25.729, by revising paragraphs (e)(2) through (e)(4) and by adding paragraphs (e)(5) and (e)(6) to read as follows:

§ 25.729 Retracting mechanism.

* * * * *

(e) * * *

(2) The flightcrew must be given an aural warning that functions continuously, or is periodically repeated, if a landing is attempted when the landing gear is not locked down.

(3) The warning must be given in sufficient time to allow the landing gear to be locked down or a go-around to be made.

(4) There must not be a manual shut-off means readily available to the flightcrew for the warning required by paragraph (e)(2) of this section such that it could be operated instinctively, inadvertently, or by habitual reflexive action.

(5) The system used to generate the aural warning must be designed to eliminate false or inappropriate alerts.

(6) Failures of systems used to inhibit the landing gear aural warning, that would prevent the warning system from operating, must be improbable.

* * * * *

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g).

4. By amending § 121.289 by revising the introductory text of paragraph (a) to read as follows:

§ 121.289 Landing gear: Aural warning device.

(a) Except for airplanes that comply with the requirements of § 25.729 of this chapter on or after January 6, 1992, each large airplane must have a landing gear aural warning device that functions continuously under the following conditions:

* * * * *

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

5. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g).

6. By amending § 125.187 by revising the introductory text of paragraph (a) to read as follows:

§ 125.187 Landing gear: Aural warning device.

(a) Except for airplanes that comply with the requirements of § 25.729 of this chapter on or after January 6, 1992, each airplane must have a landing gear aural warning device that functions continuously under the following conditions:

* * * * *

Issued in Washington, DC, on November 26, 1991.

James B. Busey,

Administrator.

[FR Doc. 91–29033 Filed 12–4–91; 8:45 am]

BILLING CODE 4910–13–M

federal register

Thursday
December 5, 1991

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 190, 191, 192, and 195

Offshore Gas and Hazardous Liquid Pipelines; Inspection and Burial; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190, 191, 192, and 195

[Docket No. PS-120; Amdts. 190-4, 191-9, 192-67, and 195-47]

RIN 2137-AB 96

Inspection and Burial of Offshore Gas and Hazardous Liquid Pipelines

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: Natural gas and hazardous liquid pipelines buried in shallow offshore waters in the Gulf of Mexico have been involved in accidents with fishing and other vessels. Public Law 101-599 was enacted to determine the extent to which pipelines in shallow waters in the Gulf of Mexico may be a hazard to fishing vessels. This Final Rule implements the immediate provisions of Public Law 101-599 amending the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979. Under this final rule, operators of natural gas and hazardous liquid pipelines are required to do the following: (1) Conduct an underwater inspection of pipelines in the Gulf of Mexico and its inlets located in water less than 15 feet deep, by November 16, 1992; (2) report to the Coast Guard those pipelines which have been discovered to be exposed or otherwise present a hazard to navigation and mark such pipelines with a buoy; and (3) bury, within 6 months, those pipelines identified under (2) above, or by any other person. This Final Rule also provides for reporting the results of the underwater inspection to the Department, as well as providing for criminal penalties for damaging, removing, defacing, or destroying a pipeline marker buoy.

EFFECTIVE DATE: The effective date of this final rule is January 6, 1992.

FOR FURTHER INFORMATION CONTACT: Cesar De Leon, (202) 366-1640, regarding the subject matter of this amendment or the Dockets Unit, (202) 366-4148, regarding copies of this amendment or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

The RSPA issued a Notice of Proposed Rulemaking (NPRM) on April 29, 1991, (56 FR 19627) proposing regulations to implement the immediate provisions of Public Law 101-599 (enacted November 16, 1990) to conduct underwater inspections of pipelines in shallow waters in the Gulf of Mexico and its inlets. This law was enacted to address the consequences of recent accidents involving fishing vessels that struck pipelines in shallow waters in the Gulf.

On July 24, 1987, a fishing vessel struck and ruptured an 8-inch diameter natural gas liquid pipeline while maneuvering in shallow waters in the Gulf of Mexico off the coast of Louisiana. The released gas ignited, resulting in the deaths of two crewmen. The pipeline was originally installed in 1968 and buried onshore, parallel to the shoreline. In the intervening years, the shoreline underwent substantial erosion, and at the time of the accident, the pipeline reportedly was exposed on the seabed in open water approximately 1 mile offshore.

On October 3, 1989, a 160-foot menhaden fishing vessel, the Northumberland, struck a Natural Gas Pipeline Co. 16-inch diameter offshore gas transmission pipeline about a ½ nautical mile offshore in the Gulf of Mexico near Sabine Pass, Texas. Natural gas under a pressure of 835 psig was released. An undetermined source onboard the vessel ignited the gas and engulfed the vessel in flames. Eleven of fourteen crew members died as a result of the accident.

In February 1990, at the request of RSPA, a joint task force was formed, made up of five Federal agencies and two state agencies to develop solutions to the risks posed by the co-existence of pipelines and vessel operations in the Gulf of Mexico. The agencies represented were RSPA, the Minerals Management Service (MMS) of the Department of the Interior, the National Ocean Service of the National Oceanic and Atmospheric Administration, the U.S. Coast Guard, the U.S. Army Corps of Engineers, the Texas Railroad Commission, and the Louisiana Office of Conservation. A report prepared by the joint task force is available in the docket. On April 9, 1990, the RSPA sent an Alert Notice to all operators of natural gas and hazardous liquid pipelines located in offshore waters to advise pipeline operators of recurring safety problems involving marine vessel operations and to alert them that exposed pipelines pose a threat to the safety of the crews of fishing vessels in shallow coastal waters. It also advised pipeline operators to identify and correct any conditions that would violate applicable pipeline safety requirements. RSPA also sent the Alert Notice to several fishing associations to alert the commercial fishing industry to the potential hazards of exposed offshore pipelines.

The RSPA pipeline safety regulations currently require that all newly constructed gas and hazardous liquid offshore pipelines located in water less than 12 feet in depth must have a minimum of 36 inches of cover or 18 inches in consolidated rock (49 CFR 192.327 and 195.248). Newly constructed gas and hazardous liquid pipelines in offshore waters from 12 feet to 200 feet deep must be installed so that the top of the pipe is below the seabed unless the pipe is protected by other equivalent means (§§ 192.319 and 195.246). The MMS issues rights-of-way permits for pipelines on the Outer Continental Shelf (OCS) and requires that newly constructed pipelines be buried 36 inches (30 CFR 250.153). The Corps of Engineers issues permits for burial of offshore pipelines and normally requires that newly constructed pipelines be buried to a depth of 36 inches in water less than 200 feet deep. However, none of the three agencies currently require that pipeline operators conduct an underwater inspection of those pipelines.

Public Law 101-599

Public Law 101-599 amended the Natural Gas Pipeline Safety Act of 1968 (NGPSA) (49 U.S.C. 1671 *et seq.*) and the Hazardous Liquid Pipeline Safety Act of 1979 (HLPSA) (49 U.S.C. 2001 *et seq.*), which are administered by the RSPA. The law requires that not later than 18 months after enactment or 1 year after issuance of regulations, whichever occurs first, the operator of each offshore gas or hazardous liquid pipeline facility in the Gulf of Mexico and its inlets shall inspect such pipeline facility and report to the Department on any portion of a pipeline facility which is "exposed" or is a "hazard to navigation" (as those terms are defined in this final rule). Therefore, this initial inspection must be completed by May 16, 1992 or 1 year after issuance of regulations, whichever comes first. This requirement shall apply to pipeline facilities between the high water mark and the point where the subsurface is under 15 feet of water, as measured from mean low water. In accordance with Public Law 101-599, hazardous liquid gathering lines of 4 inch nominal diameter and smaller are excepted from this inspection. The Department may extend the time period for compliance with this inspection requirement for an additional period of up to 6 months for gas transmission pipeline facilities, or up to 1 year for hazardous liquid pipeline facilities. The law provides that any inspection of a

pipeline facility which has occurred after October 3, 1989 (the date of the Northumberland accident) may satisfy the inspection requirements if it complies with the pertinent requirements in this final rule.

Public Law 101–599 requires the Department to establish standards by May 16, 1991, on what constitutes an "exposed pipeline facility," and what constitutes a "hazard to navigation." The law requires that pipeline operators report to the Department, through the appropriate Coast Guard offices, potential or existing navigational hazards involving pipeline facilities. As a result of the inspection, an operator of a pipeline facility who discovers any pipeline facility which is a hazard to navigation in water 15 feet deep or less as measured from mean low water, must mark the location with a Coast Guard approved marine buoy or marker and notify the Department. The law provides for criminal penalties for persons who willfully and knowingly damage, deface, remove, or destroy the marine buoy or marker. Public Law 101–599 also requires the Secretary of Transportation to issue regulations requiring each gas and hazardous liquid pipeline facility that has been inspected and found to be exposed or that constitutes a hazard to navigation, be buried within 6 months after the condition is reported to the Department.

Furthermore, Public Law 101–599 requires that not later than 30 months after enactment of the law, or May 16, 1993, the Secretary shall, on the basis of experience with the initial inspection program, establish a mandatory, systematic, and, where appropriate, periodic inspection program of offshore pipeline facilities in the Gulf of Mexico and its inlets. This requirement will be addressed in a future rulemaking.

In addition, Public Law 101–599 amends the Ports and Waterways Safety Act (33 U.S.C. 1221 *et seq.*), which is administered by the Coast Guard, to encourage fishermen and other vessel operators to report potential or existing navigational hazards involving pipeline facilities to the Department through the appropriate Coast Guard field office. Upon notification by the pipeline operator or by any other person of a hazard to navigation, the Department will notify the Coast Guard, the Office of Pipeline Safety, other affected Federal and state agencies, and vessel owners and operators in the vicinity of the pipeline facility.

Advisory Committees

This regulatory document was twice brought before the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). These advisory committees were established by statute to consider the feasibility, reasonableness, and practicability of proposed pipeline safety regulations.

The TPSSC met in Washington, DC on February 20, 1991 and the THLPSSC met in Washington, DC on February 21, 1991. These advisory committees informally discussed a draft NPRM, which proposed revisions to the regulations in Parts 192 and 195 regarding offshore pipelines. That draft notice considered by the advisory committees addressed the requirements in Public Law 101–599 as well as additional matters that were not included in the law but which had been addressed by the multi-agency task force formed after the Northumberland accident.

As a result of the opinion of the advisory committees, the proposed rule was narrowed to address only the immediate requirements of Public Law 101–599 and those requirements were proposed in the NPRM. The longer-term mandates of Public Law 101–599, as well as other offshore and underwater pipeline proposals that may merit consideration, will be addressed in a future proposed rulemaking.

Because the law has mandatory deadlines for issuance of the regulations and for completion of the initial inspection, these regulations must be expedited. Therefore, after receiving comments on the NPRM, a summary of the comments together with the NPRM were mailed to each member of the advisory committees for a vote by mail.

After receiving a summary of the comments, both advisory committees voted by mail that the NPRM rule was technically feasible, reasonable, and practicable with certain revisions suggested by some of the members. Four members of the TPSSC voted that the proposed regulations were feasible, reasonable, and practicable as published in the **Federal Register**. Eight members agreed, but suggested revisions. Six members of the THLPSSC voted that the proposed regulations were feasible, reasonable, and practicable, as published in the **Federal Register**. Five members agreed, but suggested revisions. Some of the members did not vote. All of the revisions proposed by committee members are encompassed in the comments and recommendations made by commenters to the NPRM, and the disposition of these comments is addressed below in "DISCUSSION OF COMMENTS."

Discussion of Comments

RSPA received 27 comments in response to the Notice, including 13 from pipeline operators, 4 pipeline industry associations (American Gas Association, Gas Pipeline Technology Committee, American Petroleum Institute, and Interstate Natural Gas Association of America), the National Transportation Safety Board, the Department of the Interior, the National Fisheries Institute, the American Shrimp Processors Association, and comments from 3 individual members of the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Standards Committee. Some of the comments from pipeline companies were also signed by members of the advisory committees. RSPA appreciates comments on the NPRM provided by the members of the advisory committees. RSPA also appreciates the prompt submittal of comments considering the short comment period. The excellent comments received indicate that there was sufficient time for the commenters to prepare well-founded responses.

Miscellaneous Comments

The National Fisheries Institute commented that the Preamble to the NPRM stated that neither the RSPA, MMS, or Corps of Engineers requires that pipeline operators conduct an underwater inspection or maintain burial of offshore pipelines. The Fisheries Institute commented that while underwater inspections may not be conducted, the permits issued by the Corps of Engineers require that the depth of burial of offshore pipelines be maintained. The U.S. District Court for the Western District of Louisiana, Monroe Division upheld that interpretation. RSPA and the Corps agree and has corrected this statement in the Preamble to this final rule.

A member of the THLPSSC raised the question of who would be responsible for inspecting abandoned pipelines. Also, the Louisiana Office of Conservation (LOC) stated that while they recognize that the accidents that occurred were caused by fishing vessels striking active pipelines, they remain concerned about the hazards to persons and property posed by pipeline facilities that have been abandoned in place and that are currently not subject to any inspection requirements. The LOC estimates that there are approximately 4,000 miles of abandoned pipelines in the offshore waters of Louisiana. The LOC commented that DOT has unquestioned authority to impose

conditions for abandonment of pipelines and should require, as a pre-requisite to allowing abandonment in place, that the owners of such pipelines undertake to maintain their burial, or alternatively, remove them from the seabed.

RSPA agrees that this is a matter of concern and will reconvene the Task Force on Offshore Pipelines to consider the problems of abandoned pipelines in offshore waters. In addition, identical legislative proposals sponsored by Congressman Billy Tauzin and Senator John Breaux would amend the NGPSA and the HLPSA to require that abandoned offshore pipelines be given the same safety considerations as pipelines currently in use. RSPA, in cooperation with the Task Force, will examine the issue of abandoned offshore pipelines as part of the subsequent offshore rulemaking noted previously. However, this final rule has been limited to the NPRM which incorporates the immediate requirements in Public Law 101–599.

Chevron commented that they interpreted the rulemaking to apply to lines constructed prior to the passage of the initial pipeline safety acts, NGPSA and HLPSA. Chevron observed that up to now, these lines have been "grandfathered" from meeting all construction requirements of parts 192 and 195 and if this were no longer true, the applicability sections of parts 192 and 195 should be modified to clarify whether these lines are being regulated and to what degree. Public Law 101–599 requires that all pipelines located in waters less than 15 feet deep in the Gulf of Mexico and its inlets be inspected and that all pipelines that are exposed or are a hazard to navigation be subject to notification, marking, and re-burial and does not make a distinction for pipelines that were constructed prior to the promulgation of the NGPSA and the HLPSA. Therefore, these proposed regulations requiring the inspection and re-burial of pipelines in the Gulf of Mexico and its inlets, are included in subpart I of part 192 (Operations) and in subpart F of part 195 (Operations and Maintenance), which are applicable to all pipelines regardless of when they were constructed.

Tenneco Gas commented that they expect the Coast Guard will recognize that agency's responsibility in this matter, and take steps to end the prevailing practice of fishing vessels running in waters that are too shallow for the draft of the vessel. Tenneco Gas further commented that the Coast Guard has the opportunity to bring about a great advance in offshore safety by formulating and enforcing minimum fishing boat standards covering maps, instruments, operator training, operator competence, and a prohibition against fishing boats navigating in waters that are insufficiently deep for the boat draft.

The Coast Guard is discussing these issues in their Commercial Fishing Industry Vessel Advisory Committee meetings. RSPA will continue to work with the Coast Guard and that advisory committee in exploring ways that commercial fishing operators can change their fishing practices to protect their vessels from the hazards of pipelines in shallow offshore waters.

The National Transportation Safety Board (NTSB) noted that the NPRM did not include all pipelines in the Gulf of Mexico, such as hazardous liquid pipelines operating at less than 20 percent of the pipe's specified minimum yield strength (SMYS) and hazardous liquid pipelines having 4-inch or less nominal diameter. The NTSB believes that future action by the RSPA must address all submerged pipelines that transport hazardous liquids based on the threat to public safety, rather than the pipeline's physical properties or operating characteristics. With regard to hazardous liquid pipelines having 4-inch or less nominal diameter, Public Law 101–599 specifically excepted hazardous liquid gathering lines of this size from these requirements. With regard to hazardous liquid pipelines operating at 20 percent or less of the pipe's SMYS, the current hazardous liquid pipeline safety regulations do not apply to pipelines at these low-stress levels. An Advance Notice of Proposed Rulemaking (ANPRM) issued by RSPA on October 31, 1990 (55 FR 45822) solicited comments and information for evaluation in determining whether and to what extent this exception should be removed from the regulations. If this exception of pipelines operating at 20 percent or less of SMYS is removed, the subsequent rulemaking on a mandatory and systematic inspection program of offshore pipelines in the Gulf of Mexico and its inlets as required by Public Law 101–599 would apply to such hazardous liquid pipelines.

The following additional points, set forth in the Preamble in the NPRM, bear repeating here. This final rule incorporates all of the immediate requirements of Public Law 101–599 for which RSPA is responsible. These regulations apply similarly to both gas transmission and hazardous liquid pipeline facilities, and are applicable to interstate and intrastate offshore pipelines. In accordance with the current requirements in §§ 192.1 and 195.1, these rules are applicable to offshore pipeline facilities on the OCS as that term is defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

However, in accordance with the current requirements in §§ 192.1(b)(1) and 195.1(b)(5), this amendment would not apply to the offshore gathering of gas or hazardous liquids upstream from the outlet flange of each facility on the OCS where hydrocarbons are produced or where hydrocarbons are first separated, dehydrated, or otherwise processed, whichever facility is farther downstream. The Minerals Management Service (MMS) has responsibility for gathering of gas or hazardous liquids upstream from that outlet flange pursuant to a 1976 memorandum of understanding between the Department of the Interior and the Department of Transportation. It should also be noted that gathering lines do not include production flow lines. The appropriate distinction between production flow lines and gathering lines will be addressed in an upcoming NPRM proposing to revise the definition of a gathering line.

It is also important to note that for the purpose of this final rule, the term "pipeline facilities," as set forth in Public Law 101–599 was not used. "Pipeline facilities" is defined by RSPA regulations (§§ 192.3 and 195.2) to include such facilities as offshore platforms that are not intended to be buried. There is no indication to suggest that such structures were intended to be addressed by the statute. Therefore, the final rule applies to pipelines which, in accordance with the definition of "pipeline" in §§ 192.3 and 195.2, means all parts of those physical facilities through which gas or hazardous liquids move in transportation, including pipe, valves, and other appurtenances attached to a pipe.

Part 191.1 A member of the TPSSC observed that currently, part 191 applies to operators of gas pipeline facilities; and yet, proposed § 191.27 in the NPRM was meant to apply to operators of hazardous liquid pipeline facilities, as well as operators of gas pipeline facilities. The American Petroleum Institute (API) also commented that because part 191 has traditionally addressed natural gas pipelines, they recommend that RSPA remove the applicability of proposed § 191.27 to hazardous liquid pipelines and provide a parallel provision in part 195.

RSPA agrees. RSPA had expected § 191.27 to be a precursor of a future relocation of all the reporting requirements in subpart B of part 195 to part 191. However, in the meantime,

proposed § 191.27 in the NPRM has been adopted as applicable only to natural gas pipelines, and a new § 195.57 has been inserted in subpart B of part 195 to be applicable to hazardous liquid pipelines.

Exxon commented that the location of an exposed pipeline and a pipeline that is a hazard to navigation as addressed in proposed § 191.17(a)(5) and § 191.27(a)(6), respectively, may not be able to be identified according to an MMS or state offshore area and block number tract. This is due to the fact that inlets in the Gulf may not be subject to such identification. RSPA agrees and has revised § 191.27(a)(5) and (a)(6) and § 195.57(a)(5) and (a)(6) to require that the operator report the location of each pipeline segment that is exposed or is a hazard to navigation. In addition, if available, the location must be cited according to MMS or state offshore area and block number tract. Where an MMS or state offshore area and block number tract are not available, the location must be reported by the name of the bay or inlet or by other suitable location reference.

The Interstate Natural Gas Association of America (INGAA) noted that the Preamble stated that the definition of a "hazard to navigation," i.e., where a pipeline is buried less than 12 inches below the seabed, subsumes the definition of "exposed pipeline" where the pipeline is protruding above the seabed. INGAA believes that separate reports should not be required. RSPA has not incorporated these two reporting requirements into one reporting requirement because in addition to the mandates in Public Law 101–599, RSPA is interested in getting information if a pipeline is exposed or buried less than 12 inches. This information will be relevant to the subsequent rulemaking on a mandatory, systematic, and, if appropriate, periodic inspection program as required by Public Law 101–599. Therefore, both terms, "exposed pipeline" and "hazard to navigation" remain in the regulations in Parts 192 and 195.

Section 192.1. Exxon found fault with proposed § 191.1(b)(2)(iii). They noted that the Preamble stated that the proposed § 191.1(b)(2)(iii) is intended to clarify that gathering lines in the Gulf of Mexico and its inlets will be subject to the proposed inspection, marking, and reburial requirements in §§ 192.612 and 195.413. They interpret that the following language proposed in § 192.1(b)(2):

(b) This part does not apply to—

(2) Onshore gathering of gas *outside of* (emphasis added)* * *

(iii) Inlets of the Gulf of Mexico except as provided in § 192.612 could be construed to reverse the intent of this NPRM, making gathering lines within inlets of the Gulf of Mexico subject to part 192 except the provisions of § 192.612. RSPA does not interpret this regulation in the same manner as Exxon. Nonetheless, RSPA agrees that wording suggested by Exxon may be clearer and has revised this regulation in accordance with the suggestion.

Sections 192.3 and 195.2. Practically all of the industry commenters thought that the term "inlets" in the definition of "Gulf of Mexico and its inlets" in §§ 192.3 and 195.2 should be better defined. Many industry commenters thought that inlets could be interpreted to include rivers, tidal marshes, lakes, and canals. Public Law 101–599 was enacted to assure that pipelines in shallow offshore waters where commercial fishing vessels navigate will not pose a hazard to those vessels. In that context, the Fisheries Institute, which also commented that inlets should be better defined, attached a list where menhaden and other commercial fishing activities take place. The Fisheries Institute commented that the list was not an exhaustive list but was submitted in hope that it would help in better defining "Gulf of Mexico and its inlets." The list was:

1. Fresh Water Bayou/Intercoastal Waterway to Calcasieu River, Cameron, Louisiana.
2. Calcasieu Pass, Cameron, Louisiana.
3. Intercoastal Waterway to Morgan City, Louisiana.
4. South West Pass across Vermillion Bay, Intercostal City, Louisiana.
5. Fresh Water Bayou, Intercoastal City, Louisiana.
6. Houma Navigation Channel/Intercoastal Waterway to Bayou Chene, Morgan City, Louisiana.
7. Houma Navigation Channel through Grand Calliou Bayou/Calliou Lake, DuLac, Louisiana.
8. Houma Navigation Canal through Cat Island Pass, DuLac, Louisiana.
9. East Pascagoula River, Moss Point, Mississippi.

RSPA is including this list in the Preamble in order to assist pipeline operators in identifying where menhaden and commercial fishing activities take place. Most industry commenters proposed that the definition be revised to be limited to inlets that are open to the sea. Many of these industry commenters also proposed that the exclusion of such inlets as rivers, tidal marshes, lakes, and canals be set forth in the regulation. RSPA agrees that the inlets must be better defined and has revised this definition in the final rule to refer to inlets open to the sea excluding rivers, tidal marshes, lakes, and canals.

It is important to repeat information set forth in the Preamble in the NPRM regarding the term "mean low water." That term is used in this regulation to conform with the language used in Pub. L. 101–599. "Mean low water" can be considered to denote "mean lower low water" as used in the nautical chart datum of the National Ocean Service.

Some commenters argued that the definitions of exposed pipeline and hazard to navigation should be limited to water from 3 feet to 15 feet deep, asserting that vessels do not operate in water less than 3 feet deep or that vessels operating in such shallow waters would be incapable of damaging a pipeline. Some of these commenters also stated that it would be difficult to conduct underwater inspections in such shallow waters. Enron proposed similar changes and suggested that a definition for "shallow waters" be incorporated in the definitions limiting such waters from 3 to 15 feet.

RSPA does not agree. There are locations in the offshore waters of Louisiana where the seabed deepens very slowly and 3 feet of depth may be a considerable distance out into open waters. Fishing vessels navigate in such shallow waters, especially when some of these offshore areas have silty and soft seabeds where the hulls of the commercial fishing vessels may intrude into the silty seabed and damage the pipeline. In addition, RSPA is not aware of great difficulties regarding underwater inspections in offshore waters less than 3 feet deep. More importantly, the law requires underwater inspections in waters less than 15 feet deep; so this comment was not incorporated.

Sections 192.612 and 195.413. The Gas Piping Technology Committee (GPTC) commented that many prudent operators of pipelines in the Gulf of Mexico have historically conducted periodic inspections of their offshore pipelines and those operators should be permitted to use an inspection conducted prior to October 3, 1989 as the inspection required in §§ 192.612 and 195.413, especially in an area of stable seabed conditions. RSPA does not agree. RSPA doubts that those inspections may have included determining the depth of burial of the pipelines. The language of the law is clear that only inspections conducted after October 3, 1989 can be used in compliance with the initial inspection; thus RSPA has not adopted this recommendation.

Exxon commented that the proposed rules exclude hazardous liquid gathering lines of 4-inch nominal diameter or smaller from the inspection and

suggested that a similar exclusion be provided for gas gathering lines. RSPA does not agree. While that exclusion for hazardous liquid gathering lines was provided in the law, such an exclusion was not provided for gas gathering lines. RSPA believes that all gathering lines should be handled similarly and is excluding hazardous liquid gathering lines of less than 4-inch nominal diameter only because of the exclusion in the law. RSPA does not see a reason to deviate from the law with regard to gas gathering lines of less than 4-inch nominal diameter.

Many industry commenters stated that it would be very difficult to complete the inspection by 18 months after enactment of the law, (May 16, 1992), or one year after the issuance of the regulations, whichever came first. Some industry commenters asked that the time for the initial inspection be extended to the end of the 1992 summer construction season. Transco suggested that this could be accomplished by using the provisions of the law that provide for an extension of time of 6 months, or November 16, 1992 for gas pipelines. [It should be noted that the law provides for an extension of time of one year, or May 16, 1993 for hazardous liquid pipelines]. Transco also suggested that operators who act in good faith to complete the necessary surveys in a prudent and cost effective manner, but have been unsuccessful in completing the inspection because of scheduling problems, should be afforded that consideration. This regulation, which will be effective on January 6, 1992, goes beyond the May 16, 1992 deadline. However, an extension beyond that date would be in keeping with the intent of the law where just cause exists. RSPA has participated in many forums regarding these regulations and concludes that the pipeline operators are acting in good faith, with due diligence and care, in conducting these inspections. Therefore, RSPA will utilize this provision in the law to extend the deadline for conducting this initial inspection for all pipeline operators and has made this requirement effective on November 16, 1992. Furthermore, because of the emerging development of underwater inspection technology during this period, such an extension is justified. This date for completion of the initial inspection is approximately at the end of the 1992 summer construction season in keeping with the suggestions made by industry commenters. RSPA does not see reason for extending this requirement further for hazardous liquid pipelines.

Sections 192.621(b) and 195.413(b). Several industry commenters objected to the term "discovery" used in proposed §§ 192.621 (b), (b)(1), (b)(2), and (b)(3) and 195.413 (b), (b)(1), (b)(2), and (b)(3). Those commenters believe that the term "discovery" should be changed to "determines." Those commenters stated that in areas where there is a congestion of pipelines, an exposed pipeline may be discovered but time should be allowed for the operator to determine if the pipeline belongs to the operator or if it is an abandoned pipeline.

It should be noted that the proposed rule was applicable to an operator that "* * * discovers that a pipeline *it operates* is exposed * * *" (italicized for emphasis) . Therefore, the operator must determine that an exposed pipeline it discovers is a pipeline that it operates. Therefore, RSPA does not believe that the term "discover" needs to be revised and has not adopted this recommendation.

Tenneco Gas commented that there is a deficiency in the existing gas pipeline safety regulations (§ 192.327(e)) that has been carried forward in this proposed rule. The proposed rule appears to require that offshore pipelines must be buried under actual material covering the top of the pipe, rather than being situated in a trench of a certain depth below the natural bottom of the seabed. Tenneco argued that long accepted offshore pipeline construction practice requires jetting-in a trench capable of accommodating the pipeline at least 3 feet beneath the natural bottom of the sea. In soft and silty bottoms, currents soon fill in this trench providing actual burial cover, but where a more consolidated bottom is encountered, the trench may never silt in and the pipe is never really covered although it is adequately protected from passing vessels by the steep walls of the trench. For the purpose of pipeline burial in an offshore environment, Tenneco suggested that the concept of burial should refer to the top of the pipe being beneath the normal surrounding seabed. The API made similar arguments regarding the use of the term "burial" in the definition of a hazard to navigation.

RSPA agrees. The Preamble in the regulation issued in 1976 regarding burial of offshore pipeline recognized these offshore construction practices but did not adequately craft the wording of the regulation accordingly. Revisions have been made to the burial requirements in §§ 192.612(b)(3) and 195.413(b)(3) and the definition of a hazard to navigation to clarify that the top of the pipeline must be a certain depth below the seabed rather than having to be buried. A revision has also been made to the definition of exposed pipeline to clarify that the top of the pipeline would have to be protruding above the seabed for the pipeline to be considered exposed.

In this regard, the NTSB recommended that "seabed" be defined. The NTSB recognized that the Gulf of Mexico seabed consists of soft soils or silt that make it difficult to define. However, NTSB believes that unless the term seabed is defined, pipeline operators will have no standard by which to implement requirements and OPS will have no measure by which to judge compliance.

RSPA recognizes that many offshore areas in the Gulf of Mexico do not have an easily definable seabed, but still believes that establishing a qualitative measurement of the ocean bottom, such as silt density, would be impracticable because of shifting and varying silt density on the ocean bottom. Therefore, the NTSB recommendation was not adopted.

The Department of the Interior (DOI) recommended that a hazard to navigation be defined as a pipeline less than 36 inches below the seabed in water less than 15 feet deep. DOI commented that a vessel of less than 1600 gross tons operating without a nautical chart and navigating in a manner such that its hull touches the seabed could easily cut through a natural gas or oil pipeline fully buried in 36 inches of silt of unspecified density. DOI further recommended that a pipeline should be marked until such time as the pipeline is reburied to at least 36 inches below the seabed. The NTSB also argued that pipelines be considered a hazard to navigation if not buried 36 inches because testimony at that agency's hearings indicate that commercial fishing vessels may intrude 2 or more feet into the seabed.

RSPA recognizes the hazards to pipelines that are not adequately buried in soft silt. However, RSPA believes, based on what it knows today, that it is technologically impracticable to expect that the initial 36 inches of burial be continuously maintained in light of the shifting silty seabed. RSPA believes that requiring that the top of the pipeline be at least 12 inches below the seabed provides adequate protection while recognizing the unstable offshore environment in the Gulf of Mexico. The Fisheries Institute, representing the commercial fishing industry, also recognized the difficulties of maintaining the burial of offshore pipelines, and supported requiring that

pipelines remain buried only 12 inches. Commercial fishing representatives have indicated to RSPA staff engineers that intrusion of fishing vessels into the seabed would rarely exceed 12 inches because a vessel cannot be extricated from the seabed in such a situation. Therefore, this comment was not adopted.

Many industry commenters objected to having to bury the pipeline within 6 months after discovery that a pipeline is exposed or a hazard to navigation. Those commenters argued that depending on when the discovery is made, weather conditions could make reburial within that time period a difficult, costly, and perhaps hazardous procedure. These commenters stated that the summer construction season is generally recognized as the safest time for underwater work of any kind in the Gulf. Panhandle Eastern raised an additional issue that shrimp spawn in the spring and take several weeks to mature. They also said that oysters spawn in the spring and take several years to mature but the first several weeks are critical for survival. Panhandle Eastern stated that scheduling reburial during this season may be highly detrimental to the reproduction of the shell fish.

RSPA agrees that some flexibility should be permitted for the reburial of the pipelines that are determined to be exposed or a hazard to navigation. Public Law 101–599 permits RSPA to extend the 6 months for reburial with respect to a pipeline facility for such period as is reasonable. RSPA believes that the reasons stated by some commenters—particularly regarding weather conditions during the winter which could make reburial within 6 months a difficult, costly, and perhaps hazardous procedure—justify extending the 6 month period for reburial. Therefore, this proposed requirement has been amended in this final rule to allow for reburial not later than November 1 of the following year if the 6 month period is later than November 1 of the year that an operator discovers that a pipeline it operates is exposed or a hazard to navigation.

Submar, Inc. commented that the current regulations permit less cover than the 36 inches for normal excavation or 18 inches for rock excavation for offshore pipelines if it is impracticable to comply with the minimum cover requirement, and the proposed rule did not provide that flexibility. That commenter stated that protective mats could be placed over a pipeline requiring reburial that could adequately protect the pipeline. RSPA drafted the proposed rule in accordance with the law that requires reburial.

In addition, RSPA is not sufficiently familiar with the use of these protective mats. Further, the current regulations provide such an option only if it is impracticable to comply with the current cover requirements, making such an option rare. However, RSPA will consider this proposal in a subsequent rulemaking on a mandatory and systematic inspection program of offshore pipelines in the Gulf of Mexico and its inlets as required by Public Law 101–599.

Chevron commented that referencing 33 CFR part 64 as a means to mark pipelines does not provide adequate guidance for pipeline operators. Chevron wondered what minimum buoy placement interval operators should use as a guide to mark an exposed pipeline. If an interval less than one mile is specified, Chevron is concerned that an adequate supply of buoys may not exist. The GPTC commented that Coast Guard buoys are unduly restrictive and costly (about $900) to be used for a short period of time while the pipeline is scheduled for reburial. The GPTC argued that reflective type buoys that are lower in cost should be permitted, stating that some local Coast Guard Commanders have previously demanded the use of the higher priced, lighted buoys.

RSPA does not agree that the buoys to be used to mark a pipeline should be reflective type buoys because they will only be used up to 6 months. Reflective buoys are very difficult to see at night. The Coast Guard Commanders, being familiar with the offshore waters in their districts, are in a better position to determine the type of buoy that should be used in that district. Therefore, RSPA believes that the local Coast Guard Commander should specify the type of buoy in accordance with 33 CFR part 64, and should not be restricted to low cost reflective buoys. RSPA has been advised by the Coast Guard that they require yellow lighted buoys having a yellow light flashing not more than 30 times per minute. In addition, RSPA concludes that the placement of a buoy should be at the ends of the pipeline segment and at intervals of not more than 500 yards. However, if the pipeline segment that requires marking is less than 200 yards, the segment need only be marked at the center of the segment. One mile intervals, as proposed by Chevron is too far of a distance to indicate that there is an underwater hazard. RSPA has consulted with the Coast Guard concerning these requirements. The Coast Guard advises that a list of supply sources for buoys can be obtained by contacting the Commander, Eighth Coast Guard District, Hale Boggs Federal Building, 500 Camp Street, New Orleans, LA 70130–3396; telephone (504) 589–2944 or 589–6234.

Two industry commenters stated that reporting a pipeline to the Coast Guard within 24 hours after discovery did not provide sufficient time under certain circumstances. Since an operator must determine that an exposed pipeline is a pipeline that it operates, this should provide adequate time to notify the Coast Guard 24 hours after discovery that the pipeline is exposed or a hazard to navigation. Therefore, RSPA did not adopt this comment. This final rule has been revised to require pipeline operators to notify the National Response Center, telephone: 1–800–424–8802 rather than the U.S. Coast Guard, as was proposed in the Notice. The National Response Center is operated by the Coast Guard and will provide the information to the appropriate Coast Guard district office. This final rule requires that the report to the National Response Center include the location of the pipeline segment. The Coast Guard has advised RSPA that the location should be identified by Loran—C coordinates, state plane coordinates, geographic coordinates consisting of latitude and longitude in degrees, minutes, and seconds, or by other equivalent methods.

Texaco and API argued that marking the pipeline in 7 days may not provide sufficient time. They recommended 30 days. RSPA does not agree. Thirty days is too long of a period to leave unmarked a pipeline that is exposed or a hazard to navigation. Seven days should provide sufficient time for marking a pipeline. Therefore, RSPA did not adopt this comment.

Cost/Benefit Analysis

The City of Florence Gas System commented that they would like to see a cost/benefit analysis conducted before the regulation becomes effective. RSPA has prepared such an evaluation and it is available in the docket. This evaluation estimates the present value of the benefits to be $17.6 million and the present value of the costs to be $8.7 million.

Chevron believes that the RSPA estimate of $8,000 per mile for an initial inspection is very low. They believe that $12,000 per mile is more realistic and that the costs may rise if equipment is not available. Chevron further observed that the costs of reburying exposed pipelines were not included in the cost/

benefits analysis. They estimated that this rulemaking could cost $50 million or as much as $100 million if grandfathered pipelines are covered by this regulation. Conversely, the Fisheries Institute stated that the cost of $8,000 per mile for an initial inspection is too high, indicating that $7,000 is closer to the market value.

RSPA does not agree with Chevron that this rulemaking could cost $50 million, much less $100 million. RSPA conservatively estimates that approximately 1,000 miles of offshore pipelines will be subject to the inspection requirements. RSPA acknowledges that it is difficult to estimate the number of miles of pipeline that may be exposed or a hazard to navigation, and has used conservative cost figures as well as conservative benefit figures in developing the cost/benefit analysis. Realistic reburial costs have been factored into the analysis. The number of miles of pipelines that require reburial as a result of this initial inspection will be known and appropriately considered in any later rulemaking regarding periodic inspections. With respect to this rulemaking, these regulations were developed very narrowly in accordance with the law, and RSPA has determined that the expected benefits will exceed the expected costs.

Impact Assessment

The proposed rules are considered to be non-major under Executive Order 11591, and are not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

This proposed rulemaking is required by law. The costs of conducting the underwater inspections are now averaging less than $8,000 per mile using recently developed technology. Some of the variables that affect the costs of conducting an underwater inspection are the amount of pipeline to be inspected, weather, mobilization costs, and location. Based on available data, there are less than 1,000 miles of offshore gas and hazardous liquid pipelines in the Gulf of Mexico and its inlets in water less than 15 feet deep, so that it should cost less than $8 million to conduct the initial inspection of these pipelines as mandated by Public Law 101–599. Costs are continuing to drop as better technology is developed and underwater inspections become more common. INGAA provided information regarding the underwater inspections that have been conducted as of June 23, 1990, and assuming that this data is representative of the findings in future underwater pipeline inspections, it appears that less than 1 percent of the offshore pipelines may be exposed above the seabed. However, information is not yet available to determine the percentage of the pipelines that may be a hazard to navigation (i.e., those pipelines buried less than 12 inches). Current pipeline technology can be used in reburying pipelines. The cost of reburying a pipeline also varies significantly depending on similar variable factors set forth above.

A Regulatory Evaluation has been prepared and is available in the docket. This evaluation estimates the present value of the benefits to be $17.6 million and the present value of the costs to be $8.7 million. Based on the facts available concerning the impact of this final rule, I certify under Section 605 of the Regulatory Flexibility Act that they would not, have a significant impact on a substantial number of small entities, because small entities do not operate pipelines offshore.

Paperwork Reduction Act

The final rule requires that pipeline operators report to RSPA pipelines in the Gulf of Mexico and its inlets that are exposed or a hazard to navigation. In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), these information collection requirements have been approved by the Office of Management and Budget.

The reporting and recordkeeping requirements associated with this rule were submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35. The reporting and recordkeeping approval is No. 2137–0583.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. RSPA has determined that it does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

List of Subjects

49 CFR Part 190

Administrative practice and procedure, Penalties, Pipeline safety.

49 CFR Parts 191 and 192

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA amends 49 CFR parts 190, 191, 192, and 195 as follows:

PART 190—[AMENDED]

1. The authority citation for part 190 continues to read as follows:

Authority: 49 App. U.S.C. 1672, 1677, 1679a, 1679b, 1680, 1681, 1804, 2002, 2006, 2007, 2008, 2009, and 2010; 49 CFR 1.53.

2. Section 190.229 is amended by revising paragraph (d) to read as follows:

§ 190.229 Criminal penalties generally.

* * * * *

(d) Any person who willfully and knowingly defaces, damages, removes, or destroys any pipeline sign, right-of-way marker, or marine buoy required by the NGPSA, the HLPSA, or the HMTA, or any regulation or order issued thereunder shall, upon conviction, be subject, for each offense, to a fine of not more than $5,000, imprisonment for a term not to exceed 1 year, or both.

* * * * *

PART 191—[AMENDED]

1. The authority citation for part 191 continues to read as follows:

Authority: 49 App. U.S.C. 1681(b) and 1808(b); §§ 191.23 and 191.25 also issued under 49 App. U.S.C. 1672(a); and 49 CFR 1.53.

2. Section 191.27 is added to read as follows:

§ 191.27 Filing offshore pipeline condition reports.

(a) Each operator shall, within 60 days after completion of the inspection of all its underwater pipelines subject to § 192.612(a), report the following information:

(1) Name and principal address of operator.

(2) Date of report.

(3) Name, job title, and business telephone number of person submitting the report.

(4) Total number of miles of pipeline inspected.

(5) Length and date of installation of each exposed pipeline segment, and location, including, if available, the location according to the Minerals Management Service or state offshore area and block number tract.

(6) Length and date of installation of each pipeline segment, if different from a pipeline segment identified under paragraph (a)(5) of this section, that is a hazard to navigation, and the location, including, if available, the location according to the Minerals Management

Service or state offshore area and block number tract.

(b) The report shall be mailed to the Information Officer, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. Section 192.1 is amended by adding paragraph (b)(3) to read as follows:

§ 192.1 Scope of part.

* * * * *

(b) * * *

(3) Onshore gathering of gas within inlets of the Gulf of Mexico except as provided in § 192.612.

3. In § 192.3, definitions of *Exposed pipeline*, *Gulf of Mexico and its inlets*, and *Hazard to navigation* are added in appropriate alphabetical order as follows:

§ 192.3 Definitions.

* * * * *

Exposed pipeline means a pipeline where the top of the pipe is protruding above the seabed in water less than 15 feet deep, as measured from the mean low water.

* * * * *

Gulf of Mexico and its inlets means the waters from the mean high water mark of the coast of the Gulf of Mexico and its inlets open to the sea (excluding rivers, tidal marshes, lakes, and canals) seaward to include the territorial sea and Outer Continental Shelf to a depth of 15 feet, as measured from the mean low water.

Hazard to navigation means, for the purpose of this part, a pipeline where the top of the pipe is less than 12 inches below the seabed in water less than 15 feet deep, as measured from the mean low water.

* * * * *

4. Section 192.612 is added to Subpart L to read as follows:

§ 192.612 Underwater inspection and reburial of pipelines in the Gulf of Mexico and its inlets.

(a) Each operator shall, in accordance with this section, conduct an underwater inspection of its pipelines in the Gulf of Mexico and its inlets. The inspection must be conducted after October 3, 1989 and before November 16, 1992.

(b) If, as a result of an inspection under paragraph (a) of this section, or upon notification by any person, an operator discovers that a pipeline it operates is exposed on the seabed or constitutes a hazard to navigation, the operator shall—

(1) Promptly, but not later than 24 hours after discovery, notify the National Response Center, telephone: 1–800–424–8802 of the location, and, if available, the geographic coordinates of that pipeline;

(2) Promptly, but not later than 7 days after discovery, mark the location of the pipeline in accordance with 33 CFR Part 64 at the ends of the pipeline segment and at intervals of not over 500 yards long, except that a pipeline segment less than 200 yards long need only be marked at the center; and

(3) Within 6 months after discovery, or not later than November 1 of the following year if the 6 month period is later than November 1 of the year the discovery is made, place the pipeline so that the top of the pipe is 36 inches below the seabed for normal excavation or 18 inches for rock excavation.

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 App. U.S.C. 2001 et seq.; 49 CFR 1.53.

2. Section 195.1 is amended by revising paragraph (b)(4) to read as follows:

§ 195.1 Applicability.

* * * * *

(b) * * *

(4) Transportation of petroleum in onshore gathering lines in rural areas except gathering lines in the inlets of the Gulf of Mexico subject to § 195.413;

* * * * *

3. In § 195.2, definitions of *Exposed pipeline*, *Gulf of Mexico and its inlets*, and *Hazard to navigation* are added in appropriate alphabetical order as follows:

§ 195.2 Definitions.

* * * * *

Exposed pipeline means a pipeline where the top of the pipe is protruding above the seabed in water less than 15 feet deep, as measured from the mean low water.

* * * * *

Gulf of Mexico and its inlets means the waters from the mean high water mark of the coast of the Gulf of Mexico and its inlets open to the sea (excluding rivers, tidal marshes, lakes, and canals) seaward to include the territorial sea and Outer Continental Shelf to a depth of 15 feet, as measured from the mean low water.

Hazard to navigation means, for the purpose of this part, a pipeline where the top of the pipe is less than 12 inches below the seabed in water less than 15 feet deep, as measured from the mean low water.

* * * * *

4. Section 195.57 is added to subpart B to read as follows:

§ 195.57 Filing offshore pipeline condition reports.

(a) Each operator shall, within 60 days after completion of the inspection of all its underwater pipelines subject to § 195.413(a), report the following information:

(1) Name and principal address of operator.

(2) Date of report.

(3) Name, job title, and business telephone number of person submitting the report.

(4) Total number of miles of pipeline inspected.

(5) Length and date of installation of each exposed pipeline segment, and location; including, if available, the location according to the Minerals Management Service or state offshore area and block number tract.

(6) Length and date of installation of each pipeline segment, if different from a pipeline segment identified under paragraph (a)(5) of this section, that is a hazard to navigation, and the location; including, if available, the location according to the Minerals Management Service or state offshore area and block number tract.

(b) The report shall be mailed to the Information Officer, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

4. Section 195.413 is added to subpart F to read as follows:

§ 195.413 Underwater inspection and reburial of pipelines in the Gulf of Mexico and its inlets.

(a) Except for gathering lines of 4-inch nominal diameter or smaller, each operator shall, in accordance with this section, conduct an underwater inspection of its pipelines in the Gulf of Mexico and its inlets. The inspection must be conducted after October 3, 1989 and before November 16, 1992.

(b) If, as a result of an inspection under paragraph (a) of this section, or upon notification by any person, an operator discovers that a pipeline it operates is exposed on the seabed or constitutes a hazard to navigation, the operator shall—

(1) Promptly, but not later than 24 hours after discovery, notify the National Response Center, telephone: 1–800–424–8802 of the location, and, if available, the geographic coordinates of that pipeline;

(2) Promptly, but not later than 7 days after discovery, mark the location of the pipeline in accordance with 33 CFR Part 64 at the ends of the pipeline segment and at intervals of not over 500 yards long, except that a pipeline segment less than 200 yards long need only be marked at the center; and

(3) Within 6 months after discovery, or not later than November 1 of the following year if the 6 month period is after November 1 of the year that the discovery is made, place the pipeline so that the top of the pipe is 36 inches below the seabed for normal excavation or 18 inches for rock excavation.

Issued in Washington, DC on November 27, 1991.

Travis P. Dungan,

Administrator, Research and Special Programs Administration.

[FR Doc. 91–28994 Filed 12–4–91; 8:45 am]

BILLING CODE 4910–60–M

Federal Register

Thursday
December 5, 1991

Part IV

Environmental Protection Agency

40 CFR Part 55

Outer Continental Shelf Air Regulations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL-4036-9]

Outer Continental Shelf Air Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing a new part 55 of chapter I of title 40 of the Code of Federal Regulations. This Part would establish requirements to control air pollution from outer continental shelf ("OCS") sources.

Section 328 of the Clean Air Act ("the Act") (42 U.S.C. 7401, *et seq.*), as amended by Public Law 101-549, the Clean Air Act Amendments of 1990 ("CAAA-90"), enacted on November 15, 1990, requires EPA to promulgate a rule establishing air pollution control requirements for OCS sources. The purpose of the requirements is to attain and maintain federal and state ambient air quality standards, to comply with part C of title I, and to provide for equity between onshore sources and OCS sources located within 25 miles of state seaward boundaries.

The proposed requirements apply to all OCS sources except those located in the Gulf of Mexico west of 87.5 degrees longitude (near the border of Florida and Alabama). New sources must comply with the requirements on the day of their promulgation, and existing sources must comply within 24 months of promulgation For sources located within 25 miles of a state boundary, the requirements will be the same as the requirements that would be applicable if the source were located in the corresponding onshore area ("COA"). In states affected by this rule, state boundaries extend three miles from the coastline except on the gulf coast of Florida, where the State's boundary extends three leagues (approximately 9 miles) from the coastline. Sources located beyond 25 miles of state boundaries will be subject to federal requirements for Prevention of Significant Deterioration ("PSD") (40 CFR 52.21). New Source Performance Standards ("NSPS") (40 CFR part 60), and National Emissions Standards for Hazardous Air Pollutants ("NESHAPS") (40 CFR part 61) apply to the extent they are rationally related to protection of ambient air quality standards. EPA is proposing that, when promulgated, the following federal requirements will also apply: The federal operating permit program (40 CFR part 71) and enhanced compliance and monitoring regulations promulgated pursuant to section 114(a)(3) of the Act. Beyond 25 miles of state boundaries of OCS program requirements will be implemented and enforced solely by EPA. Part 55 also establishes procedures to allow the Administrator to exempt any OCS source from a specific onshore control requirement if it is technically infeasible or poses an unreasonable threat to health or safety.

DATES: Comments on the proposed regulations must be received by February 3, 1992. The EPA will hold public hearings in January 1992 at the addresses listed below. Requests to present oral testimony must be received on or before December 19, 1991.

ADDRESSES: Comments must be mailed (in duplicate if possible) to either of the addresses below:

EPA Air Docket (A-1), Attn: Docket No. A-91-45, Environmental Protection Agency, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

EPA Air Docket (LE-131), Attn: Air Docket No. A-91-45, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The hearings will be held at the following places:

January 6, 1992, 9 a.m.-5 p.m., EPA, Region 9, 75 Hawthorne Street, San Francisco, CA.

January 7, 1992, 9 a.m.-5 p.m., Los Angeles Hyatt Regency, 711 Hope Street, Los Angeles, CA.

January 13, 1992, 9 a.m.-5 p.m., EPA Headquarters, Waterside Mall, 401 M Street, SW., Washington, DC.

January 21, 1992, 9 a.m.-5 p.m., Clarion Hotel, 4800 Spenard Road, Anchorage, Alaska.

Persons interested in attending any of the hearings or wishing to present oral testimony should contact Ms. Linda Barajas in writing at EPA, Region 9, Air and Toxics Division (A-3-1), 75 Hawthorne St., San Francisco, CA 94105.

Docket: This rulemaking is determined to be subject to the requirements of section 307(d) of the Clean Air Act. Supporting information used in developing the proposed rule is contained Docket No. A-91-76. This docket is available for public inspection and copying at the Docket addresses listed above. In Washington, the docket will be available to the public in room M-1500 from 8:30 a.m. to 12 p.m. and 1:30 p.m. to 3:30 p.m., Monday through Friday, excluding legal holidays. In San Francisco the docket will be available to the public in the EPA library, 13th floor, from 9 a.m. to 3 p.m., Monday through Friday. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Alison Bird, Air and Toxics Division (A-2), U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION: This preamble is organized according to the following outline:

List of Subjects in 40 CFR Part 55

Section I provides the background on the purpose and expected benefits of adding section 328 to the Act.

Section II contains a discussion of the rule and provides background information on the concepts behind the rule. This section also provides a comprehensive background on any issues or controversial aspects considered with respect to the rule.

Section III presents additional topics important to the OCS regulatory program. These areas are not related to specific regulatory requirements and so they are addressed in a separate section of the preamble.

Section IV contains the administrative requirements that accompany federal regulatory actions. These include the topics listed in the preamble outline.

Section V contains the list of subjects included in the proposed 40 CFR part 55.

Many citations (e.g., "[see § 55.10]") are made in this preamble. These citation sections will not be followed by

a notation of their origin such as "of this preamble" or "of section 328." Rather, the reader can recognize the origins of the sections by their nature:

- Sections of the preamble begin with a roman numeral.
- Sections of the OCS regulations appear as 55.xx.
- Sections of the Act are numbered in the hundreds.
- Sections of non-OCS EPA regulations are preceded by 40 CFR.

This preamble makes frequent use of the term "state," usually meaning the state air pollution control agency that would be the permitting authority. The reader should assume that use of "state" may also reference a local air pollution permitting agency, or certain Indian Tribes which can be the permitting authority for areas within their jurisdiction. In some cases, the term "delegated agency" is used and can refer to the state agency, the local agency, or the Indian Tribe, depending on the delegation status of the program.

I. Background and Purpose

A. Purpose and Intent

The passage of the CAAA–90 was a major accomplishment for protection of public health and the environment in the United States. This proposed rulemaking is one of the first actions that EPA will undertake to fulfill its rule development responsibilities under the Act. The intent of Congress in adding section 328 was to protect ambient air quality standards onshore and ensure compliance with the PSD requirements. EPA is to accomplish this by controlling emissions of pollutants for which ambient standards have been set and their precursors (criteria pollutants) from the OCS that can be transported onshore and affect ambient air quality. It is also the clear intent of Congress to create a more equitable regulatory environment between onshore sources and OCS sources located within 25 miles of states' seaward boundaries. To accomplish this objective, Congress required EPA to promulgate regulations that require OCS sources within 25 miles of states' seaward boundaries to comply with the same requirements that would be applicable if the OCS source were located in the COA.

In section 328, Congress transferred authority to regulate sources on part of the OCS from the Department of Interior ("DOI") to EPA. This was an attempt to consolidate the authority to regulate air pollution within EPA, the agency with primary federal authority for regulating air pollution. Congress further specified that EPA's initial rulemaking must establish requirements for sources within 25 miles of state boundaries that are the same as would be applicable if the source were located in the COA. In this way, the responsibility for protecting the environment will be shared proportionately and equitably by onshore and offshore sources. DOI retains authority on the OCS adjacent to Texas, Louisiana, Mississippi, and Alabama (in the Gulf of Mexico, west of 87.5 degrees longitude). However, Congress requires DOI to complete a study on the effects of OCS emissions on areas that remain under DOI's jurisdiction and are classified as nonattainment for nitrogen dioxide or ozone. DOI must report the results to Congress by November 15, 1993.

Historically in California, the onshore community felt that OCS emission sources were not bearing a fair share of the burden of air pollution control. Onshore sources were subject to increasingly stringent controls while virtually identical sources operated on the OCS with very few controls and little mitigation. The onshore community generally disagreed with the DOI argument and the distance of OCS sources from shore reduced their effects on onshore air quality and therefor reduced the need for controls and offsets. The result was a confrontational atmosphere in which the onshore community felt that OCS activity was encouraged at the expense of air quality or economic growth onshore. Start-up of OCS sources was often delayed by years due to extended litigation and negotiations on air quality issues. As a result, a trend developed for new OCS platforms constructed adjacent to California to apply controls to reduce emissions and obtain offsets to mitigate the impacts of remaining emissions.

This pattern of delay and confrontation in California could well have developed in other coastal areas as they began to experience OCS activity. EPA intends that the proposed OCS rule will result in a more orderly, less burdensome system of air quality permitting for OCS sources. This certainty may speed up the permitting process, which may reduce costs in some instances, particularly offsetting the additional costs associated with the rule's more stringent requirements for controls and offsets. The proposed rule thus should result in a more stable regulatory atmosphere, allowing companies to plan with greater certainty the amount of time needed to obtain necessary permits to begin construction and operation of a proposed OCS source. This regulatory certainty is particularly important in light of the President's national energy strategy, which includes the environmentally sound development of OCS reserves.

EPA would like to consolidate the review of a source's air quality impacts with reviews of the source's impact on other environmental media (e.g. water and land). EPA is soliciting specific comments and suggestions as to how this might be promoted by this rulemaking, keeping in mind the limitations of section 328.

In carrying out the non-discretionary provisions of Section 328, the inherent cost effectiveness number ($/per ton pollutant reduced) do not necessarily, in the Agency's opinion, establish a precedent for cost-effectiveness benchmarks. Had Congress granted the Agency flexibility for this provision, the Agency may have established *de minimis* levels which would have exempted some of these sources in certain areas from nitrogen oxides ("NO_x") and volatile organic compounds ("VOC") controls.

B. Regulatory History

The 1978 amendments to the Outer Continental Shelf Lands Act ("OCSLA") (43 U.S.C. 1331 *et seq*), as interpreted by the Ninth Circuit in *State of California* v. *Kleppe*, 604 F. 2d 1187 (1979), clarified that DOI (rather than EPA) had sole authority to regulate air emissions from activities authorized under the OCSLA. The amendments to the OCSLA required DOI to promulgate rules to protect the national ambient air quality standards ("NAAQS") by regulating air emissions from activities authorized under the OCSLA. In 1978, DOI published its first rulemaking effort in regard to air quality in an Advance Notice of Proposed Rulemaking ("ANPRM").

EPA comments in response to the 1978 ANPRM (D. Hawkins, "EPA Comments in Response to DOI ANPRM of 12/28/78," 1979), included suggestions to "assure that onshore and offshore facilities are treated the same." At that time EPA also pointed out the possibility of negative impacts on onshore economic growth, stating "* * * the construction of OCS sources will have an adverse impact on both air quality and the ability of sources to be built onshore * * *. The development of the OCS could impact growth of onshore areas in this fashion because emissions sources must be added to the baseline * * *." Finally, EPA suggested that for sources that may significantly affect onshore air quality, DOI requires that "* * * the controls imposed be whatever controls are imposed by the adjacent state on like sources within its territorial jurisdiction * * *."

EPA argued that its comments reflected Congressional intent, a position that EPA documented through numerous references contained in the comments, as submitted to DOI. In 1980 DOI promulgated final rules to regulate air emissions from OCS activities, and simultaneously proposed a more stringent rule that would apply only to OCS sources located on the OCS adjacent to California.

In 1982, DOI withdrew the proposed rule for the California OCS and applied the national OCS rules to the OCS adjacent to California. The decision not to adopt more stringent requirements for these areas resulted in a lawsuit, *State of California* v. *Watt*, No. 81-3234-CBM (MX) (C.D. Cal). The position taken by the complainants was that the DOI rules failed to adequately protect onshore air quality and the NAAQS, and that emissions from OCS activities had a significant impact on onshore air quality. The complainants held that DOI's action created an inequitable situation whereby emissions from onshore sources were controlled more stringently than would have been necessary if OCS sources were regulated in a manner consistent with onshore requirements. This lawsuit eventually led to an attempted negotiated rulemaking.

Meanwhile, in 1983 EPA decided to require air pollution control districts (APCDs) in California to include OCS emissions in the emission inventory of their state implementation plans (SIPs). EPA's decision was based on the fact that since no natural barriers exist to prevent onshore migration of emissions from the OCS, a realistic emissions inventory must include OCS emissions. In an area designated as a nonattainment area ("NAA") under section 107(d) of the Act, the emissions inventory is used as input to a model that is used to determine the amount that emissions must be reduced in order to attain the NAAQS. It was EPA's position that any attainment demonstration would be unrealistic and unacceptable if based on an emission inventory that did not include emissions from an entire category of major sources located in the air basin. Impacts due to increases in offshore emissions had to be mitigated by decreases in onshore emissions to prevent deterioration of onshore air quality. Actual improvement in air quality had to be achieved by reducing onshore emissions even further, thus slowing onshore growth in favor of offshore development.

In 1985, still involved in litigation of the *State of California* v. *Watt*, DOI published an ANPRM (50 FR 836), in which DOI solicited information that could be used to develop emissions control requirements for OCS activities that adversely affect the onshore air quality in California. In response to comment on the 1985 ANPRM, DOI retained an independent mediator to assess the feasibility of a negotiated rulemaking. A decision was made to pursue a negotiated rulemaking with the assistance of an independent mediator. Participants in the lawsuit and other interested parties were organized into five coalitions: Federal, State, Local, Industry, and Environmental.

In 1986, DOI initiated the negotiated rulemaking process with the purpose of reaching consensus within one year on the requirements for oil and gas operations on the OCS adjacent to California. If consensus were reached, the Secretary of the Interior was prepared to publish the agreement as a Notice of Proposed Rulemaking ("NPRM"). During the course of the negotiated rulemaking, a substantial amount of valuable information was gathered and consensus was reached on many issues. However, after two and one-half years of negotiation, the coalitions were unable to produce a consensus rule, and the negotiated rulemaking was abandoned in 1988.

In 1989, DOI published an NPRM to regulate OCS activities adjacent to California. As a result of comments received on this NPRM, DOI began discussions with EPA in order to develop a more acceptable rule. These discussions continued until Congress passed the CAAA-90. Also in 1989, a Presidential Task Force was formed to investigate issues associated with the leasing and development of three specific oil and gas leases. The Task Force presented its report to the President in January of 1990. In regard to air quality, the Task Force recommended that OCS sources comply with requirements equivalent to those imposed in the adjacent onshore area.

Congress addressed these concerns in the CAAA-90. Under section 328, Congress transferred to EPA the authority to regulate OCS sources except for sources located on the OCS adjacent to the States of Texas, Louisiana, Mississippi, and Alabama, where DOI retains authority. Section 328 requires DOI to complete a study within three years to determine the impact of emissions on nonattainment areas from OCS sources under DOI jurisdiction.

C. Description of OCS Sources and Activities

Currently, OCS activity is primarily related to the exploration and recovery of oil and gas. This activity can be divided into three phases: exploration, construction, and development and production. The last two phases occur only if oil and gas can be economically extracted. The main pollutants of concern for all of these phases are NO_x and VOC.

The exploration phase consists primarily of drilling exploratory wells. The emission sources associated with this phase are drilling vessels and the crew and supply boats that support these operations. Each exploratory well drilling usually lasts 3 to 6 months.

On-site activities during the construction phase consist of the fabrication of the platform from individual, pre-fabricated pieces and installation of pipelines. It is the most equipment-intensive phase of activity. During this stage, sections of the platform are towed by barge to the site and the platform is assembled. Emission sources associated with this phase include barges, tugs, cranes, and crew and supply boats, and emissions tend to be high due to the large amount of equipment on-site. The construction phase lasts about one to three years. Much of this time is spent fabricating the jacket, deck, and platform modules on land. The time the marine construction equipment must be on the OCS location installing components is normally broken up into several relatively brief periods.

During the development and production phases, wells are drilled from the platform and oil and/or gas is produced and processed at the platform and transported onshore for further processing. These phases consist of a wide variety of emission sources: Diesel and natural gas-fired engines and turbines (for power production and compressors), stand-by generators, fugitive emissions from processing and storage, and crew and supply boat emissions. The development phase consists of drilling the production wells and lasts two to five years, during which emissions are much greater than in the production phase. The production phase may last 25 years or longer.

D. Current and Future Activities on the OCS

At the present time, most oil and gas production on the OCS occurs in the western and central Gulf of Mexico, where more than 3,000 platforms are located and which remains under the jurisdiction of the Minerals Management Service ("MMS") of DOI. There are 23 producing platforms on the OCS adjacent to California, with at least three more under construction or development. The only other activity

occurring within EPA jurisdiction is exploratory drilling on the OCS adjacent to Alaska. MMS has sold oil and gas leases on the OCS adjacent to other states, and exploration has occurred in the Atlantic and adjacent to Florida and Alaska. In Florida and North Carolina, exploratory drilling has been approved, but has not yet begun, due to either Congressional moratoria or lack of coastal consistency concurrence by the state.

The OCSLA authorizes MMS to hold lease sales to develop resources other than oil and gas. Mining of cobalt-rich manganese crusts adjacent to Hawaii is being investigated. Other possible activities being investigated for future consideration are heavy mineral mining on the OCS adjacent to Oregon and Georgia, phosphate mining adjacent to Georgia and North Carolina, gold mining adjacent to Alaska, sand and gravel mining adjacent to New England, and sand and shell mining in the Gulf of Mexico.

II. Discussion of the Proposed Regulations

A. *Section 55.1—Statutory Authority and Scope*

Section 328 of the Act makes EPA responsible for establishing requirements to regulate OCS sources of air pollution. These regulations are intended to establish the air pollution control requirements for OCS sources and the procedures for implementation and enforcement of the requirements.

B. *Section 55.2—Definitions*

A large number of existing regulations, including definitions in those regulations, have been incorporated by reference into §§ 55.13 and 55.14. Definitions that are included in regulations incorporated by reference shall apply in the context of those particular regulations to allow the incorporated requirements and permitting programs to function in their intended manner. EPA has sought to keep the definitions given in § 55.2 to a minimum to avoid inconsistencies with the definitions given by the federal, state, and local requirements incorporated into part 55. For this reason, no new definitions of "new OCS source," "existing OCS source," or "modification" have been included. Because the federal, state, and local requirements incorporated into §§ 55.13 and 55.14 define new source, existing source, and modification, language is included in §§ 55.13 and 55.14 to link the definition of OCS source to the definitions existing in the incorporated requirements.

Consistent with section 328(a)(4)(A), part 55 references the definition of OCS in the OCSLA. A brief summary of that definition is that the OCS begins at a state's seaward boundary and extends outward to the limit of U.S. jurisdiction. For states under EPA jurisdiction, states' seaward boundaries are 3 miles from the coast, except in the Gulf of Mexico offshore of Florida, where the state's seaward boundary is 3 leagues (approximately 9 miles) from the coast.

"OCS source" is defined in the statute and is limited to activities that emit or have the potential to emit any air pollutant, that are regulated or authorized under the OCSLA, and that are located on the OCS or in or on waters above the OCS. Section 328(a)(4)(C). At the present time these activities are mostly related to the exploration and development of oil and gas reserves. OCS activities include, but are not limited to: Platform and drill ship exploration, construction, development, production, processing, and transportation.

EPA is proposing to interpret the definition of "OCS source" to exclude vessels (other than drill ships, as discussed above) because they are not "regulated or authorized" under the OCSLA. Under the OCSLA, DOI may regulate "all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring, developing, or producing resources therefrom, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources." 43 U.S.C. 1333(a)(1). This language does not include vessels other than drill ships because they are not attached to the seabed, and vessels used for the transport of OCS resources are specifically excluded. Therefore, EPA is proposing not to regulate vessels as "OCS sources," and any regulations adopted by state and local agencies to directly control vessel emissions will not be incorporated into part 55 because it would exceed EPA's authority under section 328. Drill ships are considered to be an "OCS source" because they are attached, at least temporarily, to the seabed, and so are authorized and regulated pursuant to the OCSLA; as such, they will be subject to regulation as stationary sources while attached to the seabed. Vessel emissions related to OCS activity are, however, accounted for by including vessel emissions in the "potential to emit" (defined below).

The definition of "potential to emit" of an OCS source encompasses emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en-route to or from the OCS source and within 25 miles of the OCS source. The inclusion of vessel emissions in the total emissions of the stationary source is a statutory requirement under section 328(a)(4)(C). In this manner vessel emissions of attainment pollutants will be accounted for when PSD impact analyses are performed and increment consumption if calculated. For nonattainment pollutants the OCS source will have to obtain offsets as required by the COA, and vessel emissions will be offset.

In addition, EPA has authority under Title II of the Act to regulate vessel emissions as mobile sources, in a manner analogous to the regulation of automobiles. Regulating vessels under Title II is more practical than regulating vessels associated with OCS sources under section 328, due to the nature of mobile sources. Regulating mobile sources on a broad scale eliminates the problems inherent in attempting to apply a patchwork of regulations. Vessels associated with OCS sources cross local, state, and international jurisdictional lines, and may even be international flag vessels. A study mandated by the Act is currently underway to determine the appropriate regulatory scheme for non-road engines, including vessels. It would be premature to develop another regulatory scheme for vessels prior to the completion of this congressionally mandated study, and would add another unnecessary layer of regulation.

Some commenters have offered another possible interpretation of section 328 regarding the regulation of marine vessels. This interpretation is based on the theory that section 328 provides for the direct regulation of pollution on the OCS, rather than the regulation of OCS sources. Specifically, section 328(a)(1) states that EPA "* * * shall establish requirements to *control air pollution* from Outer Continental Shelf sources * * *" (emphasis added). Section 328(a)(4)(C) then states that emissions from vessels "servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source shall be considered *direct emissions from the OCS source*" (emphasis added). Hence, it can be argued that EPA has authority pursuant to section 328 to regulate vessels. It then would follow that if a corresponding onshore area adopts requirements to control vessel emissions, EPA must incorporate those requirements into

§ 55.14. This interpretation appears, however, to contravene the plain language of the statute, which does not explicitly include vessels in the definition of "OCS source" but does explicitly include vessels emissions in offset calculations and impact analyses, indicating that such emissions were not intended to be regulated directly. This interpretation would also result in vessels associated with OCS sources being regulated under section 328 while other vessels would remain unregulated, and thus raising some concern with the equity of such regulation. EPA is soliciting comment on this interpretation.

C. *Section 55.3—Applicability*

OCS sources are, by definition, located between state seaward boundaries and the outer limits of United States jurisdiction. The proposed OCS rule establishes two separate regulatory regimes, as indicated by the statute. The first applies to OCS sources within 25 miles of state boundaries. These nearshore OCS sources must comply with requirements that "shall be the same as would be applicable if the source were located in the corresponding onshore area." Section 328(a)(1). EPA is proposing to read this requirement to mean that nearshore OCS sources will be subject to those federal, state, and local requirements applicable in the corresponding onshore area as of November 15, 1990 (the date that the CAAA–90, including section 328, were enacted) which are rationally related to the attainment and maintenance of federal and state ambient air quality standards and to part C of title I of the Act. For a discussion on the control of toxic air pollutants and the general applicability of the Act refer to section III.B. These requirements are set forth in proposed §§ 55.13 and 55.14 of this part. EPA will update the OCS rules to "maintain consistency with onshore regulations," as provided by section 328(a)(1), in accordance with the consistency provisions of § 55.12, discussed in Section II.L, below.

The second regulatory regime will apply to OCS sources located more than 25 miles beyond states' seaward boundaries. Because these outer OCS sources are located a considerable distance from shore, the impact of their emissions is less than if they were located within 25 miles of state boundaries. In some cases, the emissions from these sources might not affect ambient concentrations onshore. In contrast to the statutory requirements applying to sources located within 25 miles of state boundaries, section 328 does not link the requirements for OCS sources located beyond 25 miles from states' seaward boundaries to onshore requirements. The statute does, however, mandate that requirements be established to control air pollution from OCS sources. Therefore, within these bounds, the Administrator has discretion in determining the requirements for OCS sources located more than 25 miles beyond state boundaries.

EPA is proposing that sources located more than 25 miles beyond state boundaries be subject to the requirements for PSD. NSPS and NESHAPS will apply to the extent they are rationally related to protection of ambient air quality standards. When promulgated, the following federal requirements will also apply: The federal operating permit program (40 CFR part 71) and enhanced compliance and monitoring regulations promulgated pursuant to section 114(a)(3) of the Act. The application of these requirements will allow EPA to protect onshore air quality from the impacts of emissions produced by OCS sources located more than 25 miles beyond state seaward boundaries. If, due to future development of the OCS, the Administrator determines that these requirements are insufficient to protect both federal and state ambient standards, more stringent requirements will be established in a later rulemaking.

All OCS sources operating adjacent to any state other than Texas, Louisiana, Mississippi, or Alabama will be subject to requirements under one of the above regimes. OCS sources adjacent to these four states currently remain under the jurisdiction of MMS, and are not subject to the requirements of part 55. For a more detailed discussion of the requirements applicable to activities located in the nearshore and outer OCS regimes the reader is referred to II.M and II.N.

Section 328 sets compliance dates for new and existing sources. New sources must comply with this part on the date of promulgation. Existing sources must comply with this part within 24 months of the date of promulgation. For purposes of compliance with this requirement, a "new source" means an OCS source that is a new source within the meaning of section 111(a). An "existing source" means any source that is not a new source within the meaning of section 111(a). In instances when "new source" is defined in an NSPS regulation the source will not be treated as a new source, unless it is a new source within the meaning of section 111(a) pursuant to this part. NSPS regulations often define a new source as any source that was not existing at the time the NSPS was promulgated. This is to clarify that existing OCS sources will not be treated as new sources for the purpose of compliance with NSPS requirements.

D. *Section 55.4—Requirements to Submit a Notice of Intent (NOI)*

The owner or operator of a proposed new source within 25 miles of a state's seaward boundary must submit an NOI to the Administrator through the Regional EPA Office and to the air pollution control agency of the NOA and adjacent onshore areas. An NOI will include general and specific information about a proposed source, such as the proposed location and the expected emissions from the source, to determine the source's onshore impacts and the applicability of onshore requirements. The Administrator may always request additional information if necessary.

The NOI serves two purposes. First, the NOI will allow adequate time for onshore areas to determine if they will submit a request for designation as the COA. Because the NOA will automatically be designated as the COA for exploratory sources, these sources will not be required to submit any information to be used for the purpose of determining the COA (i.e. an impacts analysis). Second, the NOI will trigger an EPA review of the OCS rule to determine whether it is "consistent" with the onshore rules. If it is not, EPA will initiate a rule update for that specific COA, with the goal of making the proposed new source subject to the same requirements that would apply if it were proposing to locate in the COA. The purpose of this process is to meet EPA's obligation to maintain consistency between onshore and offshore requirements within 25 miles of state boundaries, as required by section 328(a)(1). The consistency update procedure and its statutory background are explained more completely in Section II. L.

Because the applicable regulations are likely to change, the owner or operator of the proposed source must not submit the NOI more than 18 months before submitting a permit application. This timeframe is consistent with onshore requirements related to permit applications.

E. *Section 55.5—Designation of the Corresponding Onshore Area (COA)*

Under section 328(a)(4)(B), the COA is assumed to be the NOA, but the Act gives the Administrator the authority to designate another area as the COA

under certain circumstances. The following is a description of the procedures and criteria that EPA is proposing to use for making the COA designations. Also included in this section is a proposal to designate COAs for some existing and proposed sources adjacent to California.

1. New Development and Production Sources

EPA is proposing the following procedure for the designation of the COA for new sources. The NOA will be assumed to be the COA. An area other than the NOA may submit a request to EPA to be designated as the COA for a specific OCS source within 60 days of the submission of the NOI. If no request is received by the Administrator within 60 days, the NOA will become the COA without any further action.

If an area does submit a request for designation as the COA, that request must be followed within 90 days from the submission of the NOI by a demonstration which shows:

- The requesting area has more stringent requirements than the NOA for the control of emissions from the proposed source;
- The emissions from the proposed source can reasonably be expected to be transported to the requesting area; and
- The emissions from the proposed source can reasonably be expected to hinder the efforts of the area to attain or maintain federal or state ambient air quality standards, or to comply with the requirements for PSD, taking into account the effect of air pollution control requirements that would be imposed by the NOA.

See section 328(a)(4)(B). If no demonstration is submitted within the allotted time period, the NOA will become the COA without further action. The EPA requests comment on the content of the demonstration and what criteria should be used in making the determination of "reasonably expected."

If a demonstration is submitted, the Administrator will issue a preliminary determination of the COA within 150 days from the original submittal of the NOI. The preliminary determination will be followed by a public review and comment period of 30 days. This will allow the NOA, the affected OCS source, and other interested parties adequate time to review the request and the supporting information, and provide EPA with any additional information that might have a bearing on the Administrator's decision.

The final designation will be issued within 240 days of the submission of the NOI. The Administrator will designate the COA based on all the available information. When the Administrator makes a COA designation, consideration will be given to the impact that the designation will have on the NOA. Although emissions from a source may be transported to an area with more stringent requirements, usually the emissions will reach the nearest area in greater concentration and more frequently (naturally there will be exceptions to the preceding statement, depending on the location and distance from the source to the areas in question). The Administrator's decision to designate the COA for a proposed source will be based on the relative benefits to the NOA and the requesting area. The EPA requests comment on the content and determination of what constitutes "relative benefits."

When a more stringent area is designated as the COA, EPA will issue and administer the permit. This will allow EPA to better evaluate the permit requirements that would be imposed and the possible exemptions allowed. Another advantage is that the Administrator will be able to expedite the permit process by eliminating some of the cross-jurisdictional questions which will inevitably arise with regard to the qualification of offsets and the granting of exemptions.

OCS sources that must obtain offsets will obtain them at the base rate required in the COA if the offsets are obtained landward from the site of the proposed OCS source, with no discounting of offsets or distance penalties imposed. Since the purpose of this rule is to protect onshore ambient air quality, offsets obtained closer to shore will have a greater positive impact on onshore air quality. If, however, the OCS source obtains offsets seaward from the proposed site all discounting and distance penalties required by the COA shall apply in the same manner as if the source were located in the COA. Offsets may be obtained from sources in the NOA or the COA or from OCS sources. For the purpose of providing a source of offsets, reductions from an OCS source shall be considered to be reductions from within the NOA or the COA associated with the source providing the emissions reductions.

It has been suggested that EPA make area-wide determinations of COAs. EPA does not currently have the resources or adequate data to make area-wide COA determinations. This type designation would require a comparative analysis of all the onshore coastal regulations and an evaluation of probable impact of OCS sources. All onshore regulations will be in a state of flux over the next several years due to changes mandated by the CAAA–90, so the relative stringency of onshore programs can be expected to change. The anticipated changes to onshore programs, combined with the uncertainty of the location of future OCS development, make it infeasible for EPA to make area-wide designations.

EPA is soliciting suggestions on methods that, without depriving any interested party of adequate time to provide input, streamline the procedure for designating the COA.

2. New Exploratory Sources

EPA is proposing that for new exploratory sources the NOA will be designated as the COA. It is unnecessarily burdensome to require a temporary activity such as exploration drilling, typically lasting 3 to 4 months, to an administrative process that lasts up to eight months. Moreover, it is unlikely that an activity of such limited duration would hinder the efforts of the area in question to attain or maintain ambient air quality standards, as required by both the statute and the proposed regulations in order for the Administrator to designate an area other than the COA as the NOA. Thus, EPA is proposing at this time to make a presumptive determination that the COA will be the NOA for all exploratory sources. If the exploratory operation results in proposed development and production at that site, then that proposed development and production source would be subject to the full COA designation process.

In addition to the excessive burden the COA designation process would impose on an exploratory source, there are technical reasons to simplify the process for these temporary operations. The determination of impacts onshore from an exploratory operation could be dependent on the time of year drilling was projected to occur because meteorological conditions are a key factor in determining the area of impact. Since many factors could delay drilling, including the COA designation process, the showing of onshore impacts would be time dependent, and the COA could very possibly change depending on the time of year drilling were to occur.

This is not a problem for development and production activity, where the preponderance of effects on a particular onshore area could be projected over the lifetime of the platform.

3. Existing and Currently Proposed Sources

EPA is also proposing to designate COAs for some sources offshore of California. All existing development and production platforms that will be subject

to this rule are located on the OCS adjacent to California. Existing sources have only 24 months from the date of promulgation to comply with the requirements contained in these regulations. New sources must comply immediately upon promulgation. By designating COAs for these sources on the date of promulgation, the existing sources will have adequate time to determine the applicable requirements, install necessary controls, and receive the required permits, and the proposed sources will be given early notice of the requirements with which they must comply. EPA is proposing that the NOAs for these sources become the designated COAs to facilitate timely compliance with part 55. No COA designations for OCS sources located adjacent to states other than California are being proposed at this time due to uncertainty regarding the exact location of future development.

At this time, EPA is proposing the South Coast Air Quality Management District as the COA for the following existing or proposed OCS facilities:

Edith, Ellen, Elly, and Eureka.

At this time, EPA is proposing the Ventura County Air Pollution control District as the COA for the following existing or proposed OCS facilities:

Grace, Gilda, Gail, and Gina.

At this time, EPA is proposing the Santa Barbara County Air Pollution Control District as the COA for the following existing or proposed OCS facilities:

Habitat, Hacienda, Harmony, Harvest, Heather, Henry, Heritage, Hermosa, Hidalgo, Hillhouse, Hogan, Houchin, Hondo and Irene, Iris, the OS & T, and Union A, B, and C.

In proposing the COAs for the above sources, EPA is not making or implying any decision as to whether the facility is a new source or an existing source pursuant to section 111(a) for the purposes of compliance with the requirements of this part.

If no adverse comment is received on the proposed COA for each of the above OCS sources, the COA designation will become final upon promulgation of this rule. If adverse comment is received, it must be accompanied by a request to consider another area as the COA and sufficient documentation to support the request.

F. *Section 55.6—Permit Requirements.*

Section 55.6 of this proposal contains requirements to enable EPA or a delegated agency to issue preconstruction and operating permits in accordance with onshore federal, state, and local regulations for sources within 25 miles of states' seaward boundaries. Section 55.6 also establishes federal permitting requirements for sources beyond 25 miles of a state boundary. As discussed in Section II.K, the Administrator will retain authority for the implementation and enforcement of the OCS regulations beyond 25 miles of state seaward boundaries.

This regulation proposes that approval to construct or permit to operate applications, submitted by a new or existing OCS source, must include a description of how the source will comply with all the applicable requirements. This is an established requirement of most preconstruction and operating permit programs; it ensures that the permitting agency and the applicant have identified all the requirements to which the source is subject and allows the applicant to identify any control technology requirements that the applicant believes are technically infeasible or will cause an unreasonable threat to health and safety.

A request for any exemptions from compliance with pollution control technology requirements must be submitted with the permit application to ensure that the air quality impacts and control technology requirements are properly evaluated. The Administrator, or delegated agency, will act on the request for exemption following the procedures discussed in the following Section II.G, including consultation with the MMS and the U.S. Coast Guard.

EPA is proposing that all OCS sources meet the applicable federal permitting requirements referenced in § 55.13. Under current federal law, new major stationary sources of air pollution are required to obtain air pollution permits before commencing construction, both in NAAs (areas where the NAAQS are exceeded or that contribute to NAAQS violations in nearby areas) and in areas where air quality is acceptable (attainment or unclassifiable areas). Because attainment status is evaluated separately for each criteria pollutant, an area can be both attainment and non-attainment. Therefore, a source may have to obtain both PSD and NAA permits.

In areas that meet the NAAQS a PSD program applies. Most states implement their own PSD programs that have been approved by EPA under 40 CFR 51.166 as part of the SIP. In the remaining states, the federal PSD program, which is set forth in 40 CFR 52.21 applies.

The federal non-attainment permit regulations are set forth in 40 CFR part 51 and accompanying appendix S. However, appendix S regulations only apply to areas that are newly designated NAAs and in certain other special circumstances. Most states implement their own NAA permit programs, which have been approved by EPA under 40 CFR 51.165 as part of the SIP.[1]

There is not, at this time, a federal operating permit program. 40 CFR Part 70, proposed May 10, 1991 (56 FR 21712), will contain regulations requiring states to develop and submit to EPA within 3 years of enactment, programs for issuing operating permits. If the COA does not have an approvable operating permit program, or does not adequately implement an approved program as required by part 70, the applicable requirements of part 71, the federal operating permit program, will apply to new and existing OCS sources on and after the date that part 71 becomes a requirement in the COA. As onshore, the applicable requirements of part 71 will be implemented and enforced by the Administrator. OCS sources located beyond 25 miles of a state's seaward boundary will also be subject to the requirements of part 71.

A basic requirement of section 328 is that sources located within 25 miles of a state seaward boundary meet the requirements, including permitting, that would be applicable if the source were located in the COA. As discussed in Section II.N, states and local air pollution control districts that are adjacent to OCS sources may have their own permit requirements that are not identical to federal law. Hence, these OCS sources must meet all the applicable COA permitting requirements in addition to the federal permitting requirements. The applicable state and local permitting requirements are set forth in § 55.14. The applicable federal permitting requirements are set forth in § 55.13.

Any existing source subject to the requirements of a COA with an operating permit program is subject to that program. Existing sources must be in compliance with this part within 24 months from the date of promulgation, which may include obtaining a permit to operate by that date.

EPA realizes that there may be some duplication in the federal and state permitting requirements of the OCS regulation. For example, an OCS source may be required to apply best available control technology (BACT) for a pollutant for which the COA is in

[1] Where a construction ban has been imposed by EPA under section 173(a)(4) because the SIP is not adequately implemented, EPA administers the ban under 40 CFR 52.24. 40 CFR 52.24 and appendix S would only apply on the OCS if they are required in the COA.

attainment by federal standards and may also be subject to a state or local requirement to apply lowest achievable emission rate (LAER) for the same pollutant for which the COA is in non-attainment by state air quality standards. In such a case, the source should apply the more stringent requirement, thereby meeting both requirements. This regulatory overlap currently exists onshore, where sources are required to meet all federal, state, and local permitting requirements.

EPA believes that the applicable federal, state, and local new source review requirements can be incorporated into a single preconstruction permit. There may be cases, however, in which an OCS source may need more than one preconstruction permit. This may occur when a delegated agency routinely issues a separate permit for each emissions unit at a facility, when it is necessary to issue separate PSD and NAA permits, or when the state has received partial delegation under this part, and permits are required from both EPA and the state.

Because the statute states that "requirements shall be the same as would be applicable if the source were located in the COA," EPA did not attempt to correct deficiencies in onshore permitting regulations. The Act provides other mechanisms to correct deficiencies in onshore regulations. Once a rule is changed onshore, it will become applicable to OCS sources when EPA promulgates new rules under the consistency update procedure set forth in § 55.12 and discussed in II.L.

Section 328 requires that existing sources comply with the OCS requirements within 24 months of promulgation. In order to comply, existing sources may need to modify their facilities or methods of operation. Therefore, EPA is proposing that the preconstruction requirements of § 55.6 not apply to a particular modification of an OCS source if: The modification is necessary to comply with the OCS regulation, it is made within 24 months of promulgation of the OCS regulation, and it will not result in an increase in emissions of a pollutant regulated under the Act. EPA intends that debottlenecking [2] or expansion projects performed in conjunction with modifications necessary to meet OCS requirements shall be subject to the preconstruction requirements of the OCS regulation. Sources intending to perform modifications that will be exempt from preconstruction requirements must submit a compliance plan to the Administrator or delegated agency prior to performing the modification. This will insure that the intended modification will indeed meet the onshore requirements.

For the purposes of §§ 55.4, 55.5, and 55.6, the definition of modification will be that corresponding to the applicable requirements of §§ 55.13 and 55.14. For applicability to part 55 in general, however, the definition of modification given in the Act, section 111(a), shall apply. In brief, a physical change, or change in method of operation, commenced after the publication of the proposed regulation, will make an existing OCS source a new OCS source.

Under the provisions of section 328 of the Act, the Administrator retains the authority to enforce any OCS requirement. EPA is therefore proposing that the applicant send a copy of any permit application required by this Section to the Administrator through the Regional Office at the same time the application is submitted to the delegated agency. To ensure that the delegated agency is adequately administering and enforcing the OCS requirements, EPA is also proposing that the delegated agency send a copy of any public notice, preliminary determination, and final permit action to the EPA Regional Office. These requirements are also consistent with EPA's goal of facilitating information transfer.

When issuing preconstruction or operating permits, EPA will use the applicable administrative and public notice and comment procedures of § 55.6 and 40 CFR part 124, which contain regulations on the issuance of EPA permits. Part 124 will be amended to reference the issuance of federal OCS permits. Where the Administrator delegates the OCS permitting requirements to a state or local agency, that agency must comply with the requirements of § 55.6 except for the administrative and public participation procedures of the federal rule, for which the agency may substitute its own procedures.

As with all permits issued under federal regulations or with federal authorization, an authority to construct or permit to operate does not relieve any owner or operator of the responsibilities to comply fully with applicable provisions of any other requirements under federal law, such as the National Environmental Policy Act (NEPA) or the Endangered Species Act. OCS air quality permits obtained pursuant to part 55 are not, however, subject to the environmental impact statement provisions of section 102(2)(c) of NEPA, 42 U.S.C. 4321.

G. *Section 55.7—Exemptions.*

Section 328(a)(2) allows the Administrator to grant an OCS source an exemption from a specific control technology requirement if the Administrator finds that the requirement is technically infeasible or will cause an unreasonable threat to health and safety. The Administrator must make a written finding explaining the basis of any exemption granted and impose another requirement as close in stringency to the original requirement as possible. Any increase in emissions due to the granting of the exemption must be offset by emissions reductions not otherwise required by the Act.

Items that could be considered as a basis for finding a requirement technically infeasible or an unreasonable threat to health and safety include the following:

- The equipment is used for emergency service and compliance would negatively impact the equipment's effective emergency response;
- Compliance could significantly increase the risk of ship collisions;
- Compliance would entail modifications that would compromise the structural integrity of the facility;
- Compliance would create adverse cross-media impacts that would result in health risks outweighing the benefit of the air emission reductions; or
- Compliance would result in an actual increase of emissions of non-attainment pollutants, due to the location of the OCS source.

The following example is provided to explain what might be considered a valid basis for granting an exemption based on health grounds. The application of a NO_x control could require large quantities of a chemical that must be transported to the platform by boat. The boat would emit NO_x as it cruises back and forth between port and platform. The farther the platform is from shore, the more NO_x the boat would emit. However, the NO_x reduction at the platform is the same no matter how far the boat must travel. At a certain distance from shore, the NO_x emitted by the boat would exceed the NO_x reduction achieved at the platform, and the result of applying the control would be a net increase in NO_x emissions. Thus, the imposition of the control measure is counterproductive and the resultant increased emissions of a precursor to ozone are an unreasonable threat to public health.

[2] Debottlenecking is an engineering term used to describe the removal of an impasse that limits the throughput of a process.

EPA is proposing that the procedures for granting exemptions be incorporated into the permitting process. When a source submits a permit application to the permitting agency, the application should contain a request for exemption from any requirement that the applicant believes is unsafe or technically infeasible. The request must include information that demonstrates that compliance with a requirement would be technically infeasible or cause an unreasonable threat to health and safety. The request should be accompanied by suggestions for substitute controls, an estimate of the residual emissions due to the substitutions, and preliminary information regarding the acquisition of any offset that will be required if the exemption is granted.

These offsets are required to prevent any deterioration of air quality due to the granting of the exemption. This is slightly different from the purpose of offsets required in an NAA, which must provide a "net air quality benefit" to assist the area to attain the ambient standards. For this reason, EPA has proposed two offsets ratios for sources that receive exemptions pursuant to § 55.7.

EPA is proposing that a new source or a modification that qualifies as a new source must comply with the offset ratio imposed in the COA. A new source or a modification that qualifies as a new source must comply with an offset ratio of 1:1 if offsets are not required in the COA or if the source is located beyond 25 miles from a state's seaward boundary. The purpose of these offsets is to prevent any deterioration in air quality. Existing sources must comply with an offset ratio of 1:1.

It is possible that a source may want to request an exemption in a situation where no permit application or permit amendment would be required, such as when a new regulation becomes applicable. If this situation occurs, a source may simply submit a request for exemption that includes all the information required by the Administrator or the delegated agency. The request must be submitted within 90 days from the date the requirement is promulgated by EPA. All other requirements and procedures applicable to exemption requests under this Section shall apply.

When issuing exemptions in conjunction with preconstruction or operating permits, EPA will use the applicable administrative and public notice and comment procedures of § 55.7 and 40 CFR part 124, which contain regulations on the issuance of EPA permits. Part 124 will be amended to reference the issuance of federal OCS permits. If no permit is required, EPA will use the administrative procedures of § 55.7.

The authority to grant technical and safety exemptions may be delegated to qualifying state and local agencies along with adequate regulations. EPA or the delegated agency must consult with the MMS and the U.S. Coast Guard when reviewing exemption requests. If the delegated agency, the MMS and the U.S. Coast Guard cannot reach a consensus decision on the exemption request within 90 days the request will automatically be appealed to the Administrator. The 90 day period may be extended by mutual agreement between all the involved agencies. The purpose of this consultation process is to ensure that OCS operations will proceed in a safe manner. If the involved agencies do reach a consensus decision, the delegated agency will use its own procedures to meet the obligation to allow for public notice and comment when the exemption is part of a permit application. If the exemption is requested but no permit or permit change is required, the delegated agency must comply with the requirements of § 55.7.

H. *Section 55.8 Monitoring, Reporting, Inspections, and Compliance.*

The Environment Protection Agency is authorized to require OCS sources to monitor and report emissions and certify compliance status pursuant to section 114. Section 114 states, in part, that in order to determine if any person is in violation of any standard under the Act, the "Administrator may require any person who owns or operates any emission source * * * to (A) establish and maintain such records; (B) make such reports; (C) install, use and maintain such monitoring equipment, and use such audit procedures, or methods; (D) sample such emissions * * *; (E) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions in impractical; (F) submit compliance certifications in accordance with section 114(a)(3); * * *"

Any monitoring or reporting requirement that appears in a rule adopted pursuant to section 114, or incorporated into this rulemaking, shall also apply to OCS sources. For example, NSPS requires certain monitoring requirements that may apply to OCS sources.

Section 114(a)(3) was added by the CAAA-90 and authorizes EPA to require any person who owns or operates a major stationary source to perform enhanced monitoring and submit compliance certifications. These compliance certifications shall include "(A) identification of the applicable requirement that is the basis of the certification, (B) the method used for determining the compliance status of the source, (C) the compliance status, (D) whether compliance is continuous or intermittent, (E) such other facts as the Administrator may require." EPA is required to promulgate regulations providing guidance and implementing section 114(a)(3) by November 1992; these rules will apply to OCS sources when promulgated.

Any OCS source that is not required to obtain a permit to operate within 24 months, pursuant to the requirements of the part, must submit a compliance report to the Administrator or the delegated agency. Section 55.8 requires that a compliance report specify all the applicable requirements under this part and a description of how the source has complied with these requirements. This compliance report must be submitted within 25 months of the date of promulgation of this part. The purpose of this compliance report is to verify that the OCS source has met the statutory requirements in the absence of a permit.

When the OCS program is delegated, the delegated agency will have whatever monitoring, reporting, inspection and compliance certification authority over the OCS sources that the agency has over onshore sources. It will be the responsibility of an agency that requests delegation of the OCS program to have amended its rules to allow for authority over sources located in the OCS region within 25 miles of its state seaward boundaries.

When EPA is administering the OCS program, inspections will be performed by EPA or an authorized agent and coordinated with the MMS and the U.S. Coast Guard for safety reasons. Where the program is delegated, the delegated agency shall perform the inspections, also in coordination with the MMS and the U.S. Coast Guard. Coordination with these agencies shall not be allowed to hinder the ability of the EPA or the delegated agency to conduct surprise inspections.

I. *Section 55.9 Enforcement.*

Section 111(e) states that it shall be unlawful for any owner or operator of any new source to operate such source in violation of any performance standard of the NSPS program. Since section 328(a)(1) provides that the OCS requirements are to be considered as standards of performance under section 111, and since section 328(a)(1) also

provides that violations of the OCS requirements shall be considered violations of section 111(e), it shall also be unlawful for any owner or operator of an OCS source to operate such source in violation of the OCS regulations.

EPA has a variety of enforcement tools under the Act that apply to OCS sources. Section 113 authorizes the Administrator to bring administrative and civil actions to prohibit sources from violating the requirements of the Act and to collect penalties for non-compliance. Section 113 also provides for criminal penalties for knowing violations of the Act. As discussed in II.H., section 114 provides authority to obtain information to determine the compliance status of sources. Section 120 provides authority to assess non-compliance penalties. Section 303 provides for emergency powers when a pollution source is presenting an imminent and substantial endangerment to public health or welfare or the environment. All of these sections apply to OCS sources.

Under a delegated program, the state or local agency shall have the enforcement authority that it possesses under state or local laws. The state or local agency shall be responsible for amending its laws to provide for authority to enforce the OCS regulations within 25 miles of the state's seaward boundaries.

If a facility is ever ordered to cease operation of any piece of equipment due to an enforcement action taken pursuant to this part by EPA or a delegated agency, the actual shut-down will be coordinated by the enforcing agency with the MMS and the U.S. Coast Guard. In no case shall the consultation process delay the initiation of the shut down by more than 24 hours.

J. *Section 55.10 Fees.*

If EPA implements the requirements of the COA, EPA will charge fees under the operating permits fee schedule established pursuant to 40 CFR part 71 when promulgated, for all OCS sources subject to the requirements of part 71. For those OCS sources not subject to the requirements of part 71, and for all OCS sources before such time as the permit fee regulations in part 71 are promulgated, EPA will charge fees in accordance with the fee schedule imposed in the COA, with the following proviso: To the extent the fees in the COA are based on regulatory objectives, such as discouraging emissions, EPA will collect fees in accordance with the fee schedule imposed in the COA; to the extent the fees in the COA are based on cost recovery, EPA will cap such fees at an amount equal to EPA's cost to issue and administer the permit. Upon delegation of authority to implement and enforce any portion of this part, EPA will cease to collect the fees associated with that portion of this part, and the delegated agency will calculate and collect fees in accordance with the fee schedules imposed in the COA.

K. *Section 55.11 Delegation.*

Section 328(a)(3) provides that each state whose seaward boundary is adjacent to a nearshore OCS source subject to the requirements of section 328(a) may, if that state so chooses, promulgate and submit to EPA state regulations for implementing and enforcing the nearshore OCS requirements of section 328(a). Pursuant to section 328(a)(3), EPA will carefully review any state enforcement regulations and authorities and if EPA determines that such plan is adequate to insure implementation and enforcement of the standards of section 328(a) and is consistent with such standards, EPA shall defer to the state for implementation and enforcement.

Section 328(a)(3) states that EPA shall "delegate" its enforcement authority to the state if EPA finds that the state's enforcement plan is "adequate." At the same time, however, section 328(a)(3) expressly preserves EPA's full authority to enforce the requirements of section 328. There is therefore an ambiguity in the statute; EPA cannot both delegate and retain its enforcement authority. Because the enforcement of federal law by state officials who are not officers of the United States raises constitutional concerns, EPA proposes to define "adequate" to include the requirement that a state enforcement plan be promulgated pursuant to a state law that expressly references or incorporates the standards and requirements adopted by EPA under section 328(a). In determining whether a state enforcement plan is promulgated pursuant to state law—a prerequisite to its adequacy—EPA will find it sufficient if the state submits a legal opinion of the attorney general of the state that the laws of the state provide adequate authority to carry out the plan of enforcement and that the standards of section 328(a)(1) have been adopted as state law.

The mere fact that a state will be enforcing state law does not, however, give the state the authority to change the OCS rule independent of EPA. The statute allows delegation of implementation and enforcement authority, but not rulemaking authority. If a state wants to change the OCS requirements, the state must first change the relevant onshore law. EPA will then update the OCS rule to "maintain consistency with onshore regulations," as provided by section 328(a)(1) and § 55.12, and as discussed further in II.L. This process can be less time-consuming than may first appear if, when the state adopts a change to an onshore regulation, the state conditions its application to OCS sources on EPA's adoption of the measure into federal law. Then, when the measure is adopted into federal law, the rule will immediately be enforceable under state law.

One complication in the process to delegate the OCS program is that section 328(a)(3) states that a state "adjacent to an OCS source" may promulgate and submit to the Administrator regulations in order to receive delegation of the OCS program. This implies that a state must have at least one source on the OCS adjacent to the state before adopting the regulations. As a practical matter, EPA will not delegate the program to a state that does not have an OCS source adjacent to it.

To receive delegation, the governor of a state, or the governor's designee, must request delegation of the OCS program from EPA and demonstrate that the state has:

- An adjacent OCS source.
- Adopted the OCS regulations.
- Adequate authority to implement and enforce the regulations.
- Adequate resources to implement and enforce the OCS regulations.

As discussed above, the second and third requirements may be satisfied by a legal opinion of the state attorney general.

EPA will maintain authority to enforce all air pollution control requirements applicable to any nearshore OCS source under section 328(a), and may promulgate regulations governing such enforcement. EPA will closely monitor all enforcement efforts undertaken by state agencies pursuant to section 328(a)(3). If EPA determines that such efforts fail or are likely to fail to adequately implement the standards of section 328(a) with respect to any OCS source or that such efforts are inconsistent with the standards of section 328(a), EPA will assume the enforcement and implementation of section 328(a) through part 55. Similarly, EPA will assert its enforcement authority if at any time EPA determines that the state agency lacks sufficient authority to undertake such efforts.

EPA may delegate part of the OCS program to a state while still retaining other parts of the program. This partial delegation may be necessary, for example, in areas that do not have

delegation of certain onshore federal programs such as PSD.

The authority to implement and enforce §§ 55.5, 55.11, and 55.12, will not be delegated. Section 55.5 contains the procedures and requirements for designation of the corresponding onshore area, § 55.11 contains the procedures and requirements for the delegation of authority to the States, and § 55.12 contains the procedures under which EPA will perform the consistency updates required by the statute. These sections specifically address the duties of EPA and the Administrator under section 328 and are not considered part of the authority to implement and enforce the OCS program.

EPA will rescind delegation of the OCS program or any part of the OCS program which has been delegated if the delegated agency does not adequately implement and enforce the OCS program. This includes administering the program in such a way as to prevent OCS sources from operating, unless the OCS source has been found to be in violation of part 55.

EPA is proposing to retain the authority to implement and enforce the program beyond 25 miles from states' seaward boundaries for several reasons. First, state and local agencies would have to adopt and implement two programs: The onshore program which would apply to OCS sources within 25 miles of state boundaries, and a second program applicable to OCS sources located beyond 25 miles from the state boundaries. Secondly, as the distance from shore increases, it is increasingly difficult to make a COA designation which is technically defensible. EPA does not believe that Congress intended EPA to delegate to states the authority to regulate areas up to 200 miles or more outside their boundaries.

L. *Section 55.12 Consistency Updates.*

Because onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements "as necessary to maintain consistency with onshore regulations." The statute uses the phrase "the same as" to describe the OCS requirements initially adopted (Section II.C) and uses the phrase "maintain consistency" in directing EPA to perform updates. This reflects a difference in the way rules in effect as of the date of enactment, and rules adopted after enactment, are to be treated.

The words "the same as" require that EPA include in the OCS regulations those onshore requirements determined to be applicable, and that were in effect, as of the date the CAAA–90 were enacted. The fact that the statute directs EPA to update the OCS requirements, rather than automatically incorporating new onshore requirements, and the use of the phrase "maintain consistency" rather than the phrase "the same as," implies that EPA's action in adopting "post-enactment" requirements must be more than rubber stamping a state or local rule into federal law. EPA proposes to interpret "maintain consistency" to mean that EPA will incorporate into part 55 those onshore rules which comply with the statutory requirements of section 328, are equitable and are rationally related to the attainment and maintenance of ambient air quality standards and the prevention of significant deterioration of air quality. These criteria are mandated by the general prohibition against arbitrary and capricious rulemaking with which the Administrator must comply in any rulemaking proceeding, under either section 307(d) of the Act or under the Administrative Procedures Act. They also comport with the general intent of the legislation to ensure equity between onshore and OCS sources. In determining whether an onshore rule is inequitable, even if no onshore sources would be controlled by a regulation adopted by a state such that only OCS sources would be affected, EPA will not consider the rule to be inequitable or arbitrary and capricious if the rule is consistent with the state's general approach to onshore regulation.

Updates also will address the requirements for areas that have not had previous OCS development. MMS publishes an inclusive five-year leasing plan that describes every proposed lease sale and an Environmental Impact Statement (EIS) must be prepared for each lease sale. EPA and interested parties will therefore have considerable notice if a new area is to become subject to exploration and/or development. EPA is proposing to promulgate OCS requirements for new areas as needed and will assure that regulations are in place in a timely manner so as not to impede the commencement of any OCS activity.

EPA is proposing to periodically update part 55 to reflect onshore rule changes that may affect OCS sources. This update will be done in accordance with notice and comment rulemaking procedures. EPA is soliciting comments on the appropriate time period to update the rule. One option is to link the consistency updates solely to the submittal of NOIs. Section II.D. of the preamble proposes that the submission of an NOI will trigger a review of the onshore rules to determine if an update is necessary. Upon submission of an NOI, EPA will compare onshore rules with the requirements of part 55. If the requirements of part 55 are found to be inconsistent with the current onshore requirements, EPA will expeditiously initiate a consistency update. A second option is to update part 55 annually. Under this option, part 55 would be evaluated on a yearly basis, with NOIs triggering early review.

Consistency updates will be performed using standard procedures for notice and comment rulemaking. Consistency updates may result in the inclusion of State or local rules or regulations into part 55 that will ultimately be disapproved as part of the SIP. Inclusion in the OCS rule does not imply that a regulation meets the requirements of the Act for SIP approval, nor does it imply the regulation will be approved by EPA for inclusion in the SIP. For additional discussion of this topic, see Section III.A.2.

M. *Section 55.13 Applicable Federal Requirements.*

Section 328 directs EPA to establish air pollution requirements for OCS sources. The statute specifies that for sources located within 25 miles of states' seaward boundaries, those requirements shall be the same as the requirements in the COA (see section II.A.). Section 328 does not mandate the content of the OCS program for OCS sources located beyond 25 miles of states' seaward boundaries. Therefore, within the framework of establishing requirements to "attain and maintain federal and state ambient standards and to comply with the provisions of part C of title 1," EPA has some latitude in establishing the requirements under Section 328 that apply to sources located beyond 25 miles from states' seaward boundaries.

In this rulemaking, EPA is proposing to apply PSD., and to the extent they are rationally related to protection of ambient air quality standards NSPS and NESHAPS. When promulgated the requirements of the federal operating permits program to outer OCS sources. These regulations will be implemented in accordance with EPA guidance. The requirements of § 55.13 apply to both nearshore and outer OCS sources. Nearshore sources must also meet the requirements of the COA, as set forth in § 55.14.

At present, there are few (if any) outer OCS sources within EPA jurisdiction and none are permanent. In the future, OCS sources may be established at distances of 28 miles to more than 200 miles offshore. Because of the uncertainty of where new sources will

be located, EPA cannot predict the impact these sources will have on onshore air quality. If the Administrator determines that additional requirements for outer OCS sources are necessary to protect onshore air quality, such requirements will be promulgated in a future rulemaking. This might occur for instance, if the density of OCS sources in a specific area cumulatively causes negative impacts to onshore air quality.

N. *Section 55.14 Applicable Requirements of the COA.*

The requirements of this Section apply only to those sources located within 25 miles of states' seaward boundaries. Section 328 mandates that sources located within 25 miles of states' seaward boundaries be subject to requirements that are the same as would be applicable if the source were located in the COA. Section 328(a)(1) provides that within 25 miles of state boundaries, requirements "shall include, but not be limited to, State and local requirements for emission controls, emission limitations, offsets, permitting, monitoring, testing, and reporting."

States have independent authority to establish air pollution regulations that apply within their jurisdiction. In many states, air pollution control regulations are established by a state agency responsible for air pollution control. In other states, particularly California, primary responsibility for regulation of air quality lies with local air pollution control districts. State law authorizes these air pollution control districts to adopt, implement, and enforce air quality regulations. In order to be considered by EPA for inclusion in the OCS rule, state and local requirements must have been formally adopted by the appropriate regulatory agency.

Because requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be "the same as" or "consistent with" onshore requirements, EPA has little flexibility in establishing requirements that apply to these OCS sources.

A large number of onshore rules, such as those regulating agricultural burning or automobile refinishing do not apply on the OCS. To reduce paperwork and the expense of promulgating rules, EPA is proposing to limit the scope of this promulgation to those rules that control sources that exist or could reasonably be expected to exist on the OCS and be regulated or authorized under the OCSLA. EPA has examined federal, state and local law to determine which onshore requirements could be applied offshore. Where possible, EPA has limited the state and local rules incorporated into part 55 to those that contain requirements that apply to OCS sources.

State and local administrative and procedural rules, such as those establishing hearing board procedures, have generally been excluded.[3] In some instances, however, individual rules contain administrative procedures along with the substantive requirements that section 328 directs EPA to promulgate. Where it was not feasible to separate the extraneous provisions from the necessary requirements, EPA has included both. In order to insure that EPA will not be required to adhere to state or local administrative or procedural requirements when implementing the OCS rule, § 55.14 explicitly states that EPA will not be bound by state or local administrative procedures. Instead, EPA will use the administrative procedures set forth in part 55 (excluding § 55.14), in 40 CFR part 124, and in rules promulgated pursuant to title V of the CAAA–90, as such rules apply in the COA.

If an onshore rule that would be applicable to a proposed OCS source is not currently incorporated into part 55, EPA will initiate a consistency update, as triggered by the submission of an NOI. This procedure is discussed in Section II.D.

Before a rule or regulation may be applied to OCS sources, it must be incorporated into part 55 by formal rulemaking. EPA proposes to include in this rule a few rules that were adopted by states or locals after November 15, 1990. Rules and rule revisions adopted by states subsequent to the date of enactment are subject to EPA consistency update requirements (see Section II.L.). In this rulemaking, therefore, EPA is doing both an initial rule adoption and a consistency update to incorporate state rules adopted after November 15, 1990.

Promulgation of OCS regulations entails the incorporation of requirements from up to three layers of law—Federal, State, and local—into one layer—40 CFR part 55. Because of this structure, it is inevitable that some overlap will exist. Onshore, sources must meet applicable federal requirements as well as State and local requirements. The difference is that the overlap does not exist within one body of law. In cases where OCS requirements overlap, the source must comply with all requirements, just as onshore sources must.

It is conceivable that a situation could arise where it is impossible for a source to comply with different versions of the same requirement. A conflict within the OCS regulation would complicate enforcement on the OCS because, unlike onshore, the conflict would exist within a single body of law. EPA has not discovered any such conflicts in the rules it has reviewed. However, if EPA identifies a conflict between a federal, state, or local requirement, EPA will analyze the rules and incorporate the version that will result in the greatest emission reductions. Strictly speaking, this could create a regulatory environment for the OCS that is not "the same as" the onshore environment. This is an artifact of the process of combining three layers of law into a single layer. As noted above, EPA has not found any conflicts between Federal, State, and local requirements.

EPA is proposing to incorporate the rules listed in the regulation that follows this preamble. The text of the rules is in the technical support document, which is part of the docket and is available at the addresses listed at the beginning of this notice.

III. Additional Topics for Discussion

A. *Relationship Between the OCS Regulations and the State Implementation Plans*

1. Emission Inventories/Attainment Demonstrations

OCS emissions will be treated in a manner consistent with EPA emission inventory guidance and are to be included in the SIP baseline emission inventory of the COA. Upon promulgation by EPA, to the extent a rule meets EPA's criteria for creditability under SIP policy, emission reductions realized by implementation of OCS rules may be used for attainment demonstrations or to meet emission reduction targets.

2. Deficiencies Incorporated Into the OCS Rule

Section 328(a) requires that EPA establish requirements to control OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. Because the statute mandates that requirements for these sources must be the same as the COA's onshore requirements, EPA must adopt a COA's rules into OCS law as they exist onshore. This limits EPA's flexibility in deciding which rules will be incorporated into part 55, and prevents EPA from making substantive changes to the rules it incorporates. As a result, EPA is proposing to incorporate into part 55 several rules that do not

[3] Upon delegation, states may use their administrative rules to implement and enforce OCS requirements, as appropriate.

conform to all of EPA's SIP guidance or certain requirements of the Act.

The following are examples of how rules may deviate from EPA SIP guidance or requirements of the Act:

• Section 172(c)(1) requires that NAAs adopt rules that require the application of reasonably available control technology (RACT). In some cases the rules proposed for inclusion in this promulgation are less stringent than RACT requirements.

• EPA has issued extensive guidance relating to SIP rules. Much of that guidance was summarized in appendix D of EPA's proposed post-1987 policy (52 FR 45044, November 24, 1987), and in a "bluebook" which elaborated on that guidance. Section 182(a)(2)(A) essentially requires most nonattainment areas to meet the preenactment VOC-RACT requirements as set forth in this guidance. Some rules that are proposed for inclusion in this promulgation do not meet all of EPA's guidance. For example, some rules do not specify EPA approved test methods or do not have adequate recordkeeping requirements.

The promulgation of OCS rules superficially resembles the SIP process. Rules that are presently in the SIP or rules that may eventually be included in the SIP are proposed for inclusion into part 55. However, SIP rules and OCS rules are subject to different standards. The net result is that rules promulgated as OCS law may contain deficiencies that would result in less than full approval for inclusion in the SIP. EPA is currently working with states to correct deficient rules. As corrections are adopted onshore, EPA will incorporate them into the OCS rule through the consistency update process.

It must be emphasized that promulgation of a state or local rule as OCS law does not constitute or imply approval of that rule as part of the SIP. Nor does it preclude any action EPA may take in regard to deficient onshore SIPs.

B. *The Applicability to OCS Sources of Regulations Controlling Air Pollutants that are not Significantly Related to a State or Federal Ambient Standard*

Section 328(a) requires the Administrator to promulgate requirements for OCS sources "to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of title I of the Act." EPA reads this provision as a restriction on EPA's authority to regulate OCS sources. Specifically, in today's rulemaking EPA is proposing to regulate only federal and state criteria pollutants and precursors to those pollutants.[4]

Although it may be argued that this approach will result in inconsistencies between the regulation of onshore and offshore sources, which section 328 was intended to remove, EPA believes that this interpretation of the statute is the better reading of the plain language of the statute. Moreover, in providing for equity between onshore and offshore sources, the statute states that "such requirements shall be the same as would be applicable if the source were located in the corresponding onshore area," where "such" refers back to "requirements * * * to attain and maintain Federal and State ambient air quality standards," thus similarly restricting the application of onshore requirements.

EPA recognizes, however, that this interpretation results in a gap in the regulatory scheme. Although non-criteria pollutants are not a significant concern with respect to current OCS activities, they could become so in the future. For example, possible gold dredging on the OCS could emit cyanide and mercury that can be regulated under section 112 of the Act but are not criteria pollutants or precursors and so would not be regulated on the OCS under section 328(a).[5] With respect to air pollutants other than those specifically addressed under section 328(a), EPA may have authority to apply the Act generally to the OCS, since the OCS is an area of federal jurisdiction and the Act in general applies to "the Nation's air resources." Section 101(b). In addition, the OCSLA itself provides that all federal laws shall apply on the OCS "to the same extent as if the OCS were an area of exclusive federal jurisdiction located within a state." Section 4(a)(1), 43 U.S.C. 1333(a)(1). EPA is requesting comment on this interpretation.

IV. Administrative Requirements

A. *Executive Order 12291*

Executive Order 12291 requires that all federal agencies prepare a regulatory impact analysis for major rules. Major rules are those that may likely result in any of the following:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions;

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

EPA performed a Regulatory Impact Analysis Screening that is available in the docket, that indicates that the proposed rule results in an impact of less than $3 million per year and therefore, EPA believes this rule is not a major rule. This result is dependent on the analytic methodology used and on assumptions having a high degree of uncertainty. EPA invites comment on the Screening Analysis, its assumptions and methodology. This rulemaking is not anticipated to meet the last two criteria listed above due to the small number of entities to be affected.

B. *Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities."

The EPA certifies that the proposed rule will not have a significant impact on a substantial number of small entities. A census of companies directly affected by the proposed regulations reveals that none meet the criteria of small according to the Small Business Administration (SBA).

C. *Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1601.01) and a copy may be obtained from Sandy Farmer, Information Policy Branch (PM-223Y), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 or by calling (202) 260-2740.

Public Reporting Burden for this collection of information is estimated to be an average of 360 hours per response for new sources and 310 hours per response for existing sources. This burden includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the

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[4] The pollutants for which federal ambient air quality standards exist are ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, lead, and particulate matter (as PM-10). See 40 CFR part 50. Some states have adopted additional ambient air quality standards.

[5] Section 112 requires EPA to develop regulations for approximately 200 hazardous air pollutants for which there are no Federal ambient air quality standards.

collection of information and compliance testing.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch, EPA, 401 M Street, SW. (PM–223Y), Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for the EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 55

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Particulate matter, Hydrocarbons, Nitrogen oxides, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 22, 1991.

William K. Reilly,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended by adding a new part 55 as follows.

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

Sec.

Authority: 42 U.S.C. 7401, *et seq.*

§ 55.1 Statutory authority and scope.

Section 328 of the Clean Air Act (the Act) (42 U.S.C. 7401, *et seq.*), as amended by Public Law 101–549, the Clean Air Act Amendments of 1990, authorizes EPA to establish requirements to regulate outer continental shelf ("OCS") sources of air pollution, in order to attain and maintain ambient air quality standards and comply with the provisions of part C of title I of the Act. This part establishes the air pollution control requirements for OCS sources and the procedures for implementation and enforcement of the requirements, consistent with the requirements of section 328.

§ 55.2 Definitions.

Administrator means the Administrator of the U.S. Environmental Protection Agency.

Corresponding Onshore Area ("COA") means, with respect to any OCS source located within 25 miles of states' seaward boundaries, the onshore area that is geographically closest to the source or another onshore area that the Administrator designates as the COA, pursuant to § 55.5 of this part.

Delegated Agency means any agency that has been delegated authority to implement or enforce the requirements of this part by the Administrator, pursuant to § 55.11 of this part.

Exploratory Source means any temporary operation conducted for the sole purpose of gathering information.

Nearest Onshore Area ("NOA") means, with respect to any OCS source, the onshore area is geographically closest to that source.

OCS Source means any equipment, activity, or facility which:

(a) Emits or has the potential to emit any air pollutant;

(b) Is regulated or authorized under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*); and

(c) Is located on the OCS or in or on waters above the OCS.

Outer Continental Shelf shall have the meaning provided, as of the date of promulgation of this part, by section 2 of the OCS Lands Act.

Onshore Area means a coastal area designated as an attainment, nonattainment, or unclassifiable area by EPA in accordance with section 107 of the Act.

Potential Emissions means the maximum emissions of a pollutant from an OCS source operating at its design capacity. Any physical or operational limitation on the capacity of a source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as a limit on the design capacity of the source if the limitation is federally enforceable. Pursuant to section 328, emissions from vessels servicing or associated with an OCS source shall be considered direct emissions from such a source while at the source, and while en-route to or from the source when within 25 miles of the source, and shall be included in the "potential to emit" for an OCS source. This definition does not alter or affect the use of this term for any other purposes under §§ 55.13 or 55.14 of this part, except that vessel emissions must be included in the "potential to emit" as used in §§ 55.13 and 55.14 of this part.

Residual Emissions means the difference in emissions from an OCS source if it applies the control requirement(s) imposed pursuant to § 55.13 and/or 55.14 of this part and emissions from that source if it applies a substitute control requirement pursuant to an exemption granted under § 55.7 of this part.

§ 55.3 Applicability.

(a) This part applies to all OCS sources except those located in the Gulf of Mexico west of 87.5 degrees longitude.

(b) OCS sources located within 25 miles of a state boundary shall be subject to all the requirements of this part which include, but are not limited to, the federal requirements as set forth in § 55.13 of this part, and the state and local requirements of the COA (designated pursuant to § 55.5 of this part), as set forth in § 55.14 of this part.

(c) OCS sources located beyond 25 miles of a state seaward boundary shall be subject to all the applicable requirements of this part, except the requirements of § 55.14 of this part.

(d) New OCS sources shall comply with the requirements of this part on the date of promulgation of this part, as mandated by section 328, where a "new OCS source" means an OCS source that is a new source within the meaning of section 111(a).

(e) Existing sources shall comply with the requirements of this part within 24 months after the date of promulgation of this part, as mandated by section 328 of the Act, where an "existing OCS source" means any source that is not a new source within the meaning of section 111(a).

§ 55.4 Requirements to submit a notice of intent.

(a) Not more than 18 months prior to submitting an application for a preconstruction permit, the applicant shall submit a Notice of Intent ("NOI") to the Administrator through the Regional Office, and to the air pollution control agencies of the NOA and onshore areas adjacent to the NOA. This requirement applies only to new sources located within 25 miles of states' seaward boundaries.

(b) The NOI shall include the following:

(1) General company information, including company name and address,

owner's name and agent, and facility site contact.

(2) Facility description in terms of the proposed process and products, including identification by Standard Industrial Classification Code.

(3) Estimate of the proposed project's potential emissions of any air pollutant, expressed in total tons per year and in such other terms as may be necessary to determine the applicability of requirements of this part. Potential emissions for the project must include all vessel emissions associated with the proposed project in accordance with the definition of potential emissions in § 55.2 of this part.

(4) Description of all emissions points including associated vessels.

(5) Estimate of quantity and type of fuels and raw materials to be used.

(6) Description of proposed air pollution control equipment.

(7) Proposed limitations on source operations or any work practice standards affecting emissions.

(8) Other information affecting emissions, including where applicable, information related to stack parameters (including height, diameter, and plume temperature), flow rates, and equipment and facility dimensions.

(9) Such other information as may be necessary to determine the applicability of onshore requirements.

(10) Such other information as may be necessary to determine the source's impact in onshore areas. Exploratory sources shall be exempt from this requirement.

§ 55.5 Corresponding onshore area designation.

(a) *Proposed Exploratory Source.* The NOA shall be the COA for exploratory sources as defined in § 55.2 of this part.

(b) *Requests for Designation.* (1) The chief executive officer of the air pollution control agency of an area that believes it has more stringent air pollution control requirements than the NOA for the proposed OCS source may submit to the Administrator a request to be designated as the COA. The request must be received by the Administrator within 60 days of the submission of the NOI. If no requests are submitted, the NOA will become the designated COA without further action, 61 days after the submission of the NOI.

(2) No later than 90 days after the submission of the NOI, a demonstration shall be submitted to the Administrator showing that:

(i) The area has more stringent requirements with respect to the control and abatement of air pollution than the NOA;

(ii) The emissions from the source are or would be transported to the requesting area; and

(iii) The transported emissions would affect the requesting area's efforts to attain or maintain a federal or state ambient air quality standard or to comply with the requirements of part C of title I, taking into account the effect of air pollution control requirements that would be imposed if the NOA were designated as the COA.

(c) *Determination by the Administrator.* (1) If no demonstrations are submitted to the Administrator within 90 days of the submission of the NOI, the NOA will become the COA 91 days after the submission of the NOI without further action.

(2) If one or more demonstrations are submitted, the Administrator will issue a preliminary designation of the COA within 150 days of the submission of the NOI, which shall be followed by a 30 day public comment period, in accordance with § 55.5(e) of this part.

(3) The Administrator will designate the COA for a specific source within 240 days of the submission of the NOI.

(4) When the Administrator designates a more stringent area as the COA with respect to a specific OCS source, EPA will issue the permit and implement and enforce the requirements of 40 CFR part 55.

(d) *Offset Requirements.* Offsets shall be acquired in accordance with the requirements imposed in the COA, but no discounting or penalties associated with distance between the proposed source and the the source of emissions reductions shall apply to offsets obtained on the coastal side of a line drawn through the proposed source parallel to the coastline. Offsets obtained on the seaward side of this line will be subject to all the requirements of the COA, including any discounting and distance penalties. Offsets may be obtained in the COA or the NOA, and/or from OCS sources with the same COA or NOA as the proposed source, notwithstanding any geographic restrictions contained in the offset requirements of the COA.

(e) *Authority to Designate the COA.* The authority to designate the COA for any OCS source shall not be delegated, but shall be retained by the Administrator.

(f) *Administrative Procedures and Public Participation.* The Administrator will use the following public notice and comment procedures for processing a request for COA designation under this section:

(1) Within 60 days from receipt of a demonstration, the Administrator shall:

(i) Make available in at least one location in the NOA and in the area requesting COA designation, a copy of all materials submitted by the requester, a copy of the Administrator's preliminary determination, and a copy or summary of other materials, if any, considered by the Administrator in making his preliminary determination; and

(ii) Notify the public, by prominent advertisement in a newspaper of general circulation in the NOA and the area requesting COA designation, of the opportunity for written public comment on the information submitted by the requester and the Administrator's preliminary COA designation.

(2) A copy of the notice required pursuant to § 55.4(e) of this part shall be sent to the requester and to officials and agencies having jurisdiction over the area nearest to the OCS source as follows: State and local air pollution control agencies, and the chief executive of the city and county; the Federal Land Manager of any adjacent Class I areas; and the Indian governing body whose lands may be affected by emissions from the OCS source.

(3) Public comments submitted in writing within 30 days after the date the public notice is made available shall be considered by the Administrator in making his final decision on the request. All comments shall be made available for public inspection. At the time that a final decision is issued, the Administrator shall issue a response to comments.

(4) The Administrator shall make a final COA designation within 60 days after the close of the public comment period. The Administrator shall notify, in writing, the requester and each person who has requested notice of the final action and shall set forth his reasons for the determination. Such notification shall be made available for public inspection.

§ 55.6 Permit requirements.

(a) General Provisions. (1) *Source information.* (i) The owner or operator of an OCS source shall submit to the Administrator or delegated agency all information necessary to perform any analysis or make any determination required under this section.

(ii) Any application submitted pursuant to this part by an OCS source shall include a description of all the requirements of this part that the applicant believes, after diligent research and inquiry, apply to the source and a description of how the source will comply with the applicable requirements.

(2) *Exemptions.* When an applicant submits any approval to construct or permit to operate application to the Administrator or delegated agency it shall include a request for any exemptions from compliance with a pollution control technology requirement that the applicant believes is technically infeasible or will cause an unreasonable threat to health and safety. The Administrator or delegated agency will act on the request for exemption under the procedures established in § 55.7 of this part.

(3) *Administrative Procedures and Public Participation.* The Administrator will follow the applicable procedures of 40 CFR part 124 in processing applications under this section.

(4) *Source Obligation.* (i) Any owner or operator who constructs or operates an OCS source not in accordance with the application submitted pursuant to part 55, or with the terms of any approval to construct or permit to operate, or any owner or operator of a source subject to the requirements of this part who commences construction after the effective date of this part without applying for and receiving approval hereunder, shall be in violation of this part.

(ii) Receipt of an approval to construct or a permit to operate from the Administrator or delegated agency shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of any other requirements under federal law.

(5) *Delegation of Authority.* If the Administrator delegates any of the responsibility for implementing and enforcing the requirements of this section to any state or local agency, the following provisions shall apply:

(i) The applicant shall send a copy of any permit application required by this section to the Administrator through the Regional Office at the same time as the application is submitted to the delegated agency.

(ii) The delegated agency shall send a copy of any public comment notice required under this Section to the Administrator through the Regional Office.

(iii) The delegated agency shall send a copy of any preliminary determination and final permit action required under this Section to the Administrator through the Regional Office on the date of the determination and shall make available to the Administrator any materials used in making the determination.

(b) Preconstruction Requirements for OCS Sources Located Within 25 Miles of a State Seaward Boundary.

(1) No OCS source to which the requirements of §§ 55.13 through 55.14 of this part apply shall begin actual construction without a permit that requires the OCS source to meet those requirements.

(2) The applicant may be required to obtain more than one approval to construct permit, if necessitated by partial delegation of this part or by the requirements of this section and §§ 55.13 and 55.14 of this part.

(3) An approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The 18 month period may be extended upon a showing satisfactory to the Administrator or the delegated agency that an extension is justified. The requirement shall not supersede a more stringent requirement under §§ 55.13 or 55.14 of this part.

(4) Any preconstruction permit issued to a new OCS source or modification shall remain in effect unless and until it expires under paragraph (b)(3) of this section or is rescinded under the applicable requirements listed in §§ 55.13 and 55.14 of this part.

(5) Whenever any proposed OCS source or modification to an existing OCS source is subject to action by a federal Agency that might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the Administrator conducted pursuant to this section shall be coordinated with the environmental reviews under that Act to the extent feasible and reasonable.

(6) The Administrator or delegated agency and the applicant shall provide written notice of any permit application from a source, the emissions from which may effect a Class I area, to the Federal Land Manager charged with direct responsibility for management of any lands within the Class I area. Such notification shall include a copy of all information contained in the permit application and shall be given within 30 days of receipt of the application and at least 60 days prior to any public hearing on the preconstruction permit.

(7) The preconstruction requirements above shall not apply to a particular modification, as defined in § 55.13 or 55.14 of this part, of an existing OCS source if:

(i) The modification is necessary to comply with this part, and no other physical change or change in the method of operation is made in conjunction with the modification;

(ii) The modification is made within 24 months of promulgation of this part; and

(iii) The modification does not result in an increase in potential emissions or actual hourly emissions of a pollutant regulated under the Act.

(8) Sources intending to perform modifications that meet all of the criteria of § 55.6(b)(7) of this part shall submit a compliance plan to the Administrator or delegated agency prior to performing the modification. The compliance plan shall describe the schedule and method the source will use to comply with the applicable OCS requirements within 24 months.

(c) Operating Permit Requirements for Sources Located Within 25 Miles of a State Seaward Boundary.

(1) All applicable operating permit requirements listed in this section and §§ 55.13 and 55.14 of this part shall apply to OCS sources.

(2) The Administrator or delegated agency shall not issue a permit to operate to an existing OCS source that has not demonstrated compliance with all the applicable requirements of this part.

(3) If the COA does not have an approvable operating permit program or does not adequately implement an approved program as required by 40 CFR part 70,[1] the applicable requirements of 40 CFR part 71,[2] the federal permitting program, shall apply to OCS sources on and after the date that 40 CFR part 71 becomes a requirement in the COA. The applicable requirements of 40 CFR part 71 will be implemented and enforced by the Administrator.

(d) Permit Requirements for Sources located beyond 25 miles of a State Seaward Boundary. (1) OCS sources located beyond 25 miles of a state seaward boundary shall be subject to the permitting requirements set forth in § 55.13 of this part.

(2) The Administrator shall retain authority to implement and enforce all requirements of this part for OCS sources located beyond 25 miles from a state seaward boundary.

§ 55.7 Exemptions.

(a) The Administrator or the delegated agency may exempt a source from a control technology requirement in effect under this part if the Administrator or the delegated agency finds that compliance with the control technology requirement is technically infeasible or

[1] 40 CFR part 70 was published in the Federal Register issue of May 10, 1991 (56 FR 21712) as a proposed rule.

[2] EPA will propose 40 CFR part 71 in the future.

will cause an unreasonable threat to health and safety.

(b) An applicant shall submit a request for an exemption from a control technology requirement at the same time as the applicant submits a preconstruction or operating permit application to the Administrator or delegated agency. If no permit or permit modification is required, an exemption request must be submitted to the Administrator or delegated agency within 90 days from the date the requirement is promulgated by EPA.

(1) A request for exemption shall include information that demonstrates that compliance with a requirement of this part would be technically infeasible or would cause an unreasonable threat to health and safety.

(2) The request shall include a proposed substitute requirement(s) as close in stringency to the original requirement as possible.

(3) The request shall include an estimate of emission reductions that would be achieved by compliance with the original requirement, an estimate of emission reductions that would be achieved by compliance with the proposed substitute requirement(s), and an estimate of residual emissions.

(4) The request shall identify emission reductions of a sufficient quantity to offset the estimated residual emissions.

(c) If the authority to grant exemptions has been delegated, the delegated agency shall consult with the Minerals Management Service and the U.S. Coast Guard to determine whether the exemption will be granted.

(1) The delegated agency shall provide to the Minerals Management Service, and the U.S. Coast Guard a copy of the application within 15 days of receiving such application.

(2) If the delegated agency, the Minerals Management Service, and the U.S. Coast Guard cannot reach consensus decision on an exemption request within 90 days from the date the delegated agency received the applications, the exemption request shall automatically be appealed to the Administrator.

(3) Automatic appeal to the Administrator can be delayed beyond the initial 90 days by the mutual consent of the delegated agency, the Minerals Management Service, and the U.S. Coast Guard.

(d) At the time the draft permit is issued for public comment or within 90 days of receipt of the exemption request if no permit is required, the Administrator or the delegated agency shall:

(1) Propose to grant the exemption request; and

(i) Shall propose a substitute requirement(s), equal to or as close in stringency to the original requirement as possible; and

(ii) Provide for adequate public notice and comment; or

(2) Shall deny the exemption request.

(e) *Grant of Exemption.* (1) The Administrator or delegated agency shall impose a substitute requirement(s), equal to or as close in stringency to the original requirement as possible.

(2) The Administrator or the delegated agency shall require the applicant to offset any residual emissions resulting from the exemption, in accordance with the requirements of the Act and the regulations thereunder.

(3) For new and existing OCS sources as defined in the applicable requirements of §§ 55.13 and 55.14 of this part, offsets shall be obtained at the following ratios, in accordance with the requirements of the Act and the regulations thereunder:

(i) New OCS sources shall comply with the offset ratio required in the COA if offsets are required in the COA;

(ii) New OCS sources shall comply with the offset ratio of 1:1 if offsets are required in the COA;

(iii) Existing OCS sources shall offset at a ratio of 1:1.

(f) *Administrative Procedures and Public Participation.* If a permit is not required, the Administrator will use the following procedures for processing an exemption request under this section:

(1) Within 30 days of receipt of an exemption request, the Administrator shall advise the applicant of any deficiency in the information submitted in support of the exemption. In the event of such a deficiency, the date of receipt of the request, for the purpose of this Section, shall be the date on which all required information is received by the Administrator.

(2) Within 90 days after receipt of a complete request, the Administrator shall:

(i) Make a preliminary determination whether the exemption request should be granted with conditions in accordance with paragraph (d) of this section, or denied. Denials of exemption requests are not subject to any further public notice, comment, or hearings. Denials by the Regional Administrator may be informally appealed to the Administrator within 30 days of the decision by a letter setting forth the relevant facts. The appeal shall be considered denied if the Administrator does not take action on the letter within 60 days after receiving it. Written notice of the denial shall be given to the requester.

(ii) Make available, in a least one location in the COA and NOA, a copy of all materials submitted by the requester, a copy of the Administrator's preliminary determination, and a copy or summary of other materials, if any, considered by the Administrator in making his preliminary determination; and

(iii) Notify the public, by prominent advertisement in a newspaper of general circulation in the COA and NOA, of the opportunity for written public comment on the information submitted by the owner or operator and the Administrator's preliminary determination on the approvability of the exemption request.

(3) A copy of the notice required pursuant to this paragraph shall be sent to the applicant and to officials and agencies having jurisdiction in the COA and NOA as follows: State and local air pollution control agencies, and the chief executive of the city and county; the Federal Land Manager of any adjacent Class I areas; and the Indian governing body whose lands may be affected by emissions from the OCS source.

(4) Public comments submitted in writing within 30 days after the date the public notice is made available will be considered by the Administrator in making his final decision on the request. All comments will be made available for public inspection. At the time that any final decision is issued, the Administrator will issue a response to comments.

(5) The Administrator will take final action on the exemption request within 30 days after the close of the public comment period. The Administrator will notify, in writing, the applicant and each person who has submitted written comments, or requested notice of the final action, of the conditional approval, or denial of the request, and will set forth his reasons for conditional approval or denial. Such notification will be made available for public inspection.

(6) Within 30 days after final action has been taken, any person filed comments on the preliminary determination may petition the Administrator to review any aspect of the decision. Any person who failed to file comments on the preliminary decision may petition for administrative review only on the changes from the preliminary to the final decision.

(7) The Administrator may extend each of the time periods specified in § 55.7(e) of this part by no more than 30 days or such other period as agreed to by the applicant and the Administrator.

§ 55.8 Monitoring, reporting, inspections, and compliance.

(a) The Administrator may require monitoring or reporting and may authorize inspections pursuant to section 114 of the Act and the regulations thereunder. Sources shall also be subject to the requirements as set forth in §§ 55.13 and 55.14 of this part.

(b) The requirements for Enhanced Compliance and Monitoring (section 114(a)(3)) and the requirements for Certification of Compliance (40 CFR part 64) shall apply.

(c) An existing OCS source that is not required to obtain a permit to operate within 24 months of the date of promulgation of this part shall submit a compliance report to the Administrator or delegated agency within 25 months of promulgation of this part. The compliance report shall specify all the applicable OCS requirements and a description of how the source has complied with these requirements.

(d) The Administrator or the delegated agency shall consult with the Minerals Management Service and the U.S. Coast Guard prior to inspections. This shall in no way interfere with the ability of EPA or the delegated agency to conduct surprise inspections.

§ 55.9 Enforcement.

(a) OCS sources shall comply with all requirements of this part and all permits issued pursuant to this part. Failure to do so shall be considered a violation of section 111(e) of the Act.

(b) Pursuant to section 328 of the Act, the provisions of sections 113, 114, 120, and 303 of the Act shall apply to OCS sources.

(c) If a facility is ordered to cease operation of any piece of equipment due to enforcement action taken by EPA or a delegated agency pursuant to this part, the shut down will be coordinated by the enforcing agency, with the Minerals Management Service and the U.S. Coast Guard to assure that the shut down can proceed in a safe manner. No shut down action will occur until consultation with these agencies is completed, but in no case will initiation of the shut down be delayed by more than 24 hours.

§ 55.10 Fees.

(a) *OCS Sources Located Within 25 Miles from States' Seaward Boundaries.*

(1) Until promulgation of 40 CFR part 71 in the **Federal Register** as a final rule, EPA will collect operating fees from OCS sources calculated in accordance with the fee requirements imposed in the COA if the fees are based on regulatory objectives, such as discouraging emissions. If the fee requirements are based on cost recovery objectives, however, EPA will adjust the fees to reflect the costs to EPA to issue and administer the permit program. Upon its promulgation in the **Federal Register** as a final rule, EPA will collect operating permit fees in accordance with the requirements 40 CFR part 71.

(2) EPA will collect all other fees from OCS sources calculated in accordance with the fee requirements imposed on the COA if the fees are based on regulatory objectives, such as discouraging emissions. If the fee requirements are based on cost recovery objectives, however, EPA will adjust the fees to reflect the costs to EPA to issue and administer the permit program.

(3) Upon delegation, the delegated agency will collect fees from OCS sources calculated in accordance with the fee requirements imposed in the COA. Upon delegation of authority to implement and enforce any portion of this part, EPA will cease to collect fees imposed in conjunction with that portion.

(b) *OCS Sources Located Beyond 25 Miles from States' Seaward Boundaries.* EPA will calculate and collect fees in accordance with the requirements of 40 CFR part 71 when promulgated as a final rule in the **Federal Register.**

§ 55.11 Delegation.

(a) The governor or the governor's designee of any state adjacent to an OCS source subject to the requirements of this part, may submit a request to the Administrator for authority to implement and enforce the requirements of this OCS program within 25 miles of the state seaward boundary, pursuant to section 328(c) of the Act. Authority to implement and enforce §§ 55.5, 55.11, and 55.12 of this part, will not be delegated.

(b) The Administrator will delegate implementation and enforcement authority to a state if the Administrator determines that the state's regulations are adequate including a demonstration by the state that:

(1) It has an adjacent OCS source;

(2) It has adopted the appropriate portions of this part into state law;

(3) It has adequate authority under state law to implement and enforce the requirements of this part. A letter from the State Attorney General shall be required stating that the requesting agency has such authority; and

(4) It has adequate resources to implement and enforce the requirements for this part.

(c) The Administrator will notify in writing the governor or the governor's designee of the Administrator's final action on a request for delegation within 6 months of the receipt of the request.

(d) If the Administrator finds that the state regulations are adequate, the Administrator will authorize the state to implement and enforce the OCS requirements under state law. If the Administrator finds that only part of the state regulations are adequate, he will authorize the state to implement and enforce only that portion of this part.

(e) Upon delegation, a state may use any authority it possesses under state law to enforce any permit condition or any other requirement of this part for which the agency has delegated authority under this part. A state may use any authority it possesses under state law to require monitoring and reporting and to conduct inspections.

(f) Nothing in this part shall prohibit the Administrator from enforcing any requirement of this part.

(g) The Administrator will withdraw a delegation of any authority to implement and enforce any or all of this part if the Administrator determines that:

(1) The requirements of this part are not being adequately implemented or enforced by the delegated agency;

(2) The requirements of this part are being implemented or enforced in an inequitable, arbitrary, or capricious manner.

(h) *Sharing of information.* Any information obtained or used in the administration of a delegated program shall be made available to EPA upon request without restriction. If the information has been submitted to the delegated agency under a claim of confidentiality, the delegated agency must notify the source of this obligation and submit that claim to EPA. Any information obtained from a delegated agency accompanied by a claim of confidentiality will be treated in accordance with the requirements of 40 CFR part 2.

(i) *Grant of Exemptions.* A decision by a delegated agency to grant or deny an exemption request may be appealed to the Administrator in accordance with § 55.7(e)(6) of this part.

§ 55.12 Consistency updates.

(a) The Administrator will update this part as necessary to maintain consistency with onshore requirements in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I.

(b) When an OCS source submits an NOI, the Administrator will evaluate the requirements of this part to determine whether they are consistent with the onshore requirements existing at that

time, in order to determine if a consistency update is necessary. If a consistency update is necessary, the Administrator will update this Part in an expeditious manner.

(c) No rule or regulation will be incorporated into this part if EPA determines that it is inequitable, arbitrary, or capricious.

§ 55.13 Listing of federal requirements that apply to OCS sources.

(a) The requirements of this section shall apply to OCS sources as set forth below. In the event that a requirement of this section conflicts with an applicable requirement of § 55.14 of this part, and a source cannot comply with the requirements of both sections, the more stringent requirement shall apply.

(b) In applying the requirements of this section:

(1) *New Source* means new OCS source; and

(2) *Existing Source* means existing OCS source; and

(3) *Modification* means a modification to an OCS source.

(c) 40 CFR part 60 (NSPS) shall apply to all OCS sources in the same manner as in the NOA.

(d) 40 CFR 52.21 (PSD) shall apply to OCS source:

(1) Located within 25 miles of the states' seaward boundary if the requirements are in effect in the COA;

(2) Located beyond 25 miles of states' seaward boundaries.

(e) 40 CFR part 61, together with any other provisions promulgated pursuant to section 112 of the Act, shall apply if rationally related to the attainment and maintenance of federal or state ambient air quality standards.

(f) 40 CFR part 71 when promulgated, shall apply to OCS sources:

(1) Located within 25 miles of the states' seaward boundary if the requirements are in effect in the COA;

(2) Located beyond 25 miles of states' seaward boundaries.

(g) The provisions of 40 CFR 52.10, 40 CFR 52.24, and 40 CFR part 51 and accompanying appendix S shall apply to OCS sources located within 25 miles of states' seaward boundaries, if these requirements are in effect in the COA.

§ 55.14 Listing of Federal, State, and Local Requirements that Apply to OCS Sources Located Within 25 Miles of States' Seaward Boundaries, by State.

(a) Definitions. (1) In applying the requirements of this section:

(i) *New Source* means new OCS source; and

(ii) *Existing Source* means existing OCS source; and

(iii) *Modification* means a modification to an existing OCS source.

(2) During periods of EPA implementation and enforcement of this section, the following shall apply:

(i) Any reference to a State or local air pollution control agency shall mean EPA.

(ii) Any submittal to a State or local air pollution control agency shall be submitted to the Administrator through the EPA Regional Office.

(iii) Nothing in this section shall alter or limit EPA's authority to administer or enforce the requirements of this part under federal law.

(iv) EPA shall not be bound by any state or local administrative or procedural requirements including, but not limited to requirements pertaining to hearing boards, permit issuance, public notice procedures, and public hearings. EPA will follow the applicable procedures set forth elsewhere in this part, in 40 CFR part 124, and in Federal rules promulgated pursuant to title V of the Act (as such rules apply in the COA), when administering this section.

(b) Alaska. (1) Federal Requirements.

(i) 40 CFR part 52, subpart C.

(ii) (reserved)

(2) State requirements.

(i) Alaska Administrative Code—Department of Environmental Conservation. The following sections of title 18, chapter 50:

18 AAC 50.020 Ambient Air Quality Standards (Effective 7/21/91)
18 AAC 50.030 Open Burning (Effective 10/30/83)
18 AAC 50.040 Incinerators (Effective 10/30/83)
18 AAC 50.050 Industrial Processes and Fuel Burning Equipment (Effective 5/11/91)
18 AAC 50.090 Ice Fog Limitations (Effective 5/26/72)
18 AAC 50.100 Marine Vessels (Effective 7/21/91)
18 AAC 50.110 Air Pollution Prohibited (Effective 5/26/72)
18 AAC 50.300 Permit to Operate (Effective 7/21/91)
18 AAC 50.310 Revocation or Suspension of Permit (Effective 5/4/80)
18 AAC 50.400 Application Review and Issuance of Permit to Operate (Effective 7/21/91)
18 AAC 50.500 Source Testing (Effective 6/2/88)
18 AAC 50.510 Ambient Analysis Methods (Effective 7/21/91)
18 AAC 50.520 Emission and Ambient Monitoring (Effective 7/21/91)
18 AAC 50.530 Circumvention (Effective 6/7/87)
18 AAC 50.620 Air Quality Control Plan; Volume II, Section IV: Paragraph F.—Facility Review Procedures; Paragraph G.—Application Review and Permit Development, only. (Effective 7/21/91)
18 AAC 50.900 Definitions (Effective 7/21/91)

(ii) (Reserved)

(3) Local requirements. (i) South Central Alaska Clean Air Authority.

15.30.030 Definitions
15.30.100 Registration and Notification, except E.
15.30.110 Permit to Operate
15.30.120 Source Reports
15.30.130 Source Tests
15.35.040 Stationary Source Emissions—General Definitions
15.35.050 Stationary Source Emissions—Visible Emission Standards
15.35.060 Stationary Source Emissions—Emission Standards
15.35.080 Stationary Source Emissions—Circumvention
15.35.090 Stationary Source Emissions—Fugitive Emissions
15.35.100 Stationary Source Emissions—Open Burning

(ii) (Reserved)

(c) California. (1) Federal Requirements.

(i) 40 CFR part 52, subpart F.

(ii) (Reserved)

(2) State requirements.

(reserved)

(3) Local requirements.

(i)–(iv) (reserved)

(v) San Luis Obispo County Air Pollution Control District.

Rule 103 Conflicts Between District, State and Federal Rules (Adopted 8/6/76)
Rule 104 Action in Areas of High Concentration (Adopted 7/5/77)
Rule 105 Definitions (Adopted 11/5/91)
Rule 106 Standard Conditions (Adopted 8/6/76)
Rule 108 Severability (Adopted 11/13/84)
Rule 113 Continuous Emissions Monitoring, except F. (Adopted 7/5/77)
Rule 201 Equipment not Requiring a Permit, except A.1.b. (Adopted 11/5/91)
Rule 202 Permits, except A.4. and A.8. (Adopted 11/5/91)
Rule 203 Applications, except 2. (Adopted 11/5/91)
Rule 204 Requirements, except B.2. and C. (Adopted 11/5/91)
Rule 209 Provision for Sampling and Testing Facilities (Adopted 11/5/91)
Rule 210 Periodic Inspection and Renewal of Permits to Operate (Adopted 11/5/91)
Rule 213 Calculations, except E.4. and F. (Adopted 11/5/91)
Rule 302 Schedule of Fees (Adopted 7/1/91)
Rule 305 Fees for Acid Deposition Research (Adopted 7/18/89)
Rule 401 Visible Emissions (Adopted 8/6/76)
Rule 403 Particulate Matter Emission Standards (Adopted 8/6/76)
Rule 404 Sulfur Compounds Emission Standards, Limitations and Prohibitions (Adopted 12/6/76)
Rule 405 Nitrogen Oxides Emission Standards, Limitations and Prohibitions (Adopted 11/13/84)
Rule 406 Carbon Monoxide Emission Standards, Limitations and Prohibitions (Adopted 11/14/84)

Rule 407 Organic Material Emission Standards, Limitations and Prohibitions (Adopted 1/10/89)
Rule 411 Surface Coating of Metal Parts and Products (Adopted 1/10/89)
Rule 416 Degreasing Operations (Adopted 6/18/79)
Rule 422 Refinery Process Turnarounds (Adopted 6/18/79)
Rule 501 General Burning Provisions (Adopted 1/10/89)
Rule 503 Incinerator Burning, except B.1.a. (Adopted 2/7/89)
Rule 601 New Source Performance Standards (Adopted 9/4/90)

(vi) Santa Barbara County Air Pollution Control District.

Rule 102 Definitions (Adopted 7/30/91)
Rule 103 Severability (Adopted 10/23/78)
Rule 201 Permits Required (Adopted 7/2/79)
Rule 202 Exemptions to Rule 201 (Adopted 7/30/91)
Rule 203 Transfer (Adopted 10/23/78)
Rule 204 Applications (Adopted 10/23/78)
Rule 205 Standards for Granting Applications (Adopted 7/30/91)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Applications (Adopted 10/23/78)
Rule 210 Fees (Adopted 5/7/91)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter—Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration—Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes—Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate—Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems—Southern Zone (Adopted 10/23/78)
Rule 321 Control of Degreasing Operations (Adopted 7/10/90)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 2/20/90)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Storage of Petroleum and Petroleum Products (Adopted 7/11/89)
Rule 326 Effluent Oil Water Separators (Adopted 10/23/78)
Rule 327 Organic Land Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 331 Refinery Valves and Flanges (Adopted 7/11/89)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 505 Breakdown Conditions Sections A., B.1., and D. only. (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)

(vii) South Coast Air Quality Management District.

Rule 102 Definition of Terms (Adopted 11/4/88)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 107 Determination of Volatile Organic Compounds in Organic Material (Adopted 1/8/82)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 5/5/89)
Rule 201 Permits Required (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 1/4/85)
Rule 205 Cancellation of Applications (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit for Open Burning (Adopted 1/5/90)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications (Adopted 1/5/90)
Rule 212 Standards for Approving Permits (Adopted 6/28/90)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Stack Monitoring (Adopted 8/7/81)
Rule 219 Equipment Not Requiring a Permit Pursuant to Regulation II (Adopted 6/3/88)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 6/7/91)
Rule 304 Equipment, Materials and Ambient Air Analyses (Adopted 7/6/90)
Rule 304.1 Analyses Fees (Adopted 6/7/91)
Rule 305 Fees for Acid Deposition Research (Adopted 3/3/89)
Rule 306 Plan Fees (Adopted 7/6/90)
Rule 304.1 Analyses Fees (Adopted 5/1/87)
Rule 401 Visible Emissions (Adopted 4/7/89)
Rule 403 Fugitive Dust (Adopted 5/5/76)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/4/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only (Adopted 5/5/78)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 5/4/90)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 5/4/90)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 3/5/82)
Rule 444 Open Fires (Adopted 10/2/87)
Rule 463 Storage of Organic Liquids (Adopted 12/7/90)
Rule 465 Vacuum Producing Devices or Systems (Adopted 12/7/90)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment—Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77)

Addendum to Regulation IV

Rule 701 General (Adopted 7/9/82)
Rule 702 Definitions (Adopted 7/11/80)
Rule 704 Episode (Declaration Adopted 7/9/82)
Rule 707 Radio-Communication System (Adopted 7/11/80)
Rule 708 Plans (Adopted 7/9/82)
Rule 708.1 Stationary Sources Required to File Plans (Adopted 4/4/80)
Rule 708.2 Content of Stationary Source Curtailment Plans (Adopted 4/4/80)
Rule 708.4 Procedural Requirements for Plans (Adopted 7/11/80)
Rule 709 First Stage Episode Actions (Adopted 7/11/80)
Rule 710 Second Stage Episode Actions (Adopted 7/11/80)
Rule 711 Third Stage Episode Actions (Adopted 7/11/80)
Rule 712 Sulfate Episode Actions (Adopted 7/11/80)
Rule 715 Burning of Fossil Fuel on Episode Days (Adopted 8/24/77)
Regulation IX New Source Performance Standards (Adopted 9/7/90)
Rule 1106 Marine Coating Operations (Adopted 12/7/90)
Rule 1107 Coating of Metal Parts and Products (Adopted 11/2/90)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/6/81)

Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous- and Liquid-Fueled Internal Combustion Engines (Adopted 9/7/90)
Rule 1113 Architectural Coatings (Adopted 12/7/90)
Rule 1116.1 Lightering Vessel Operations—Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 12/1/78)
Rule 1122 Solvent Cleaners (Degreasers) (Adopted 5/5/89)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1129 Aerosol Coatings (Adopted 11/2/90)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/4/89)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 1/6/89)
Rule 1146.1 Emissions of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 10/5/90)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 4/1/88)
Rule 1168 Control of Volatile Organic Compound Emissions from Adhesive Applications (Adopted 7/19/91)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 12/7/90)
Rule 1176 Sumps and Wastewater Separators (Adopted 1/5/90)
Rule 1301 General (Adopted 6/28/90)
Rule 1302 Definitions (Adopted 5/3/91)
Rule 1303 Requirements (Adopted 5/3/91)
Rule 1304 Exemptions (Adopted 5/3/91)
Rule 1306 Emission Calculations (Adopted 5/3/91)
Rule 1313 Permits to Operate (Adopted 6/28/90)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 10/6/89)
Rule 1701 General (Adopted 1/6/89)
Rule 1702 Definitions (Adopted 1/6/89)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 1/6/89)
Rule 1706 Emission Calculations (Adopted 1/6/89)
Rule 1713 Source Obligation (Adopted 10/7/88)

Appendix

(viii) Ventura County Air Pollution Control District.

Rule 2 Definitions (Adopted 5/8/90)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 7/5/83)
Rule 11 Application Contents (Adopted 8/15/78)
Rule 12 Statement by Application Preparer (Adopted 6/16/87)
Rule 13 Statement by Applicant (Adopted 11/21/78)
Rule 14 Trial Test Runs (Adopted 5/23/72)
Rule 15 Permit Issuance (Adopted 7/5/83)
Rule 16 Permit Contents (Adopted 12/2/80)
Rule 18 Permit to Operate Application (Adopted 8/17/76)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 21 Expiration of Applications and Permits (Adopted 6/23/81)
Rule 23 Exemptions from Permit (Adopted 1/8/91)
Rule 24 Source Recordkeeping and Reporting (Adopted 11/21/78)
Rule 26 New Source Review (Adopted 2/26/85)
Rule 26.1 All New or Modified Major Stationary Sources (Adopted 11/19/85)
Rule 26.2 New or Modified Non-Major Sources (Adopted 11/19/85)
Rule 26.3 New or Modified Stationary Sources—Prevention of Significant Deterioration (PSD) (Adopted 11/19/85)
Rule 26.6 Air Quality Impact Analysis and Notification (Adopted 1/10/84)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 5/30/89)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)

Appendix II–A Information Required for Applications to the Air Pollution Control District

Appendix II–B Best Available Control Technology (BACT) Tables

Rule 42 Permit Fees (Adopted 6/19/90)
Rule 44 Exemption Evaluation Fee (Adopted 1/8/91)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter—Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter—Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 7/5/83)
Rule 56 Open fires (5/24/88)
Rule 57 Combustion Contaminants—Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment—Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 7/5/83)
Rule 66 Organic Solvents (Adopted 11/24/87)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 9/11/90)
Rule 71.1 Crude Oil Production and Separation (Adopted 10/4/88)
Rule 71.2 Storage of Reactive Organic Compound Liquids Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 9/11/90)
Rule 71.4 Petroleum Sumps, Pits, Ponds and Well Cellars (Adopted 10/4/88)
Rule 72 New Source Performance Standards (NSPS) (Adopted 6/19/90)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 9/5/89)
Rule 74.2 Architectural Coatings (Adopted 10/21/86)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 5/8/90)
Rule 74.6.1 Cold Cleaning Operations (Adopted 9/12/89)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8 Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 9/5/89)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 9/22/87)
Rule 74.11 Natural Gas-Fired Residential Water Heaters—Control of NO_x (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 5/15/89)
Rule 74.15 Boilers, Steam Generators and Process Heaters (Adopted 3/28/89)
Rule 74.16 Oilfield Drilling Operations (Adopted 1/8/91)
Rule 75 Circumvention (Adopted 11/27/78)

Appendix IV–A Soap Bubble Tests

Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Stack Monitoring (Adopted 6/4/91)
Rule 155 Plans (Adopted 11/20/79)
Rule 157 First Stage Episode Actions (Adopted 11/20/79)
Rule 158 Second Stage Episode Actions (Adopted 11/20/79)
Rule 159 Third Stage Episode Actions (Adopted 11/20/79)

(d) and (e) [reserved]

(f) Florida. (1) Federal Requirements.

(i) 40 CFR part 52, subpart K.

(ii) [reserved]

(2) State requirements.

(i) Florida Administrative Code—Department of Environmental Regulation. The following sections of chapter 17:

2.100 Definitions (Adopted 9/13/90)
2.200 Statement of Intent (Adopted 8/26/81)
2.210 Permits Required (Adopted 7/9/89)
2.215 Emission Estimates (Adopted 5/1/85)
2.240 Circumvention (Adopted 8/26/81)
2.250 Excess Emissions (Adopted 8/26/81)
2.260 Air Quality Models (Adopted 7/9/89)
2.270 Stack Height Policy (Adopted 10/20/86)

2.280 Severability (Adopted 8/26/81)
2.300 Ambient Air Quality Standards (Adopted 7/9/89)
2.310 Maximum Allowable Increases (Prevention of Significant Deterioration) (Adopted 7/13/90)
2.320 Air Pollution Episodes (Adopted 8/26/81)
2.330 Air Alert (Adopted 5/30/80)
2.340 Air Warning (Adopted 7/9/89)
2.350 Air Emergency (Adopted 5/30/88)
2.500 Prevention of Significant Deterioration (Adopted 11/25/82)
2.510 New Source Review for Nonattainment Areas (Adopted 8/30/89)
2.520 Sources Not Subject to Prevention of Significant Deterioration or Nonattainment Requirements (Adopted 7/9/89)
2.530 Source Reclassification (Adopted 1/12/82)
2.540 Source Specific New Source Review Requirements (Adopted 7/9/89)
2.600 Specific Source Emission Limiting and Performance Standards (Adopted 8/30/89)
2.610 General Particulate Emission Limiting Standards (Adopted 7/9/89)
2.620 General Pollutant Emission Limiting Standards, except (2). (Adopted 8/26/81)
2.630 Best Available Control Technology (BACT) (Adopted 5/1/85)
2.640 Lowest Achievable Emission Rate (LAER) (Adopted 8/26/81)
2.650 Reasonably Available Control Technology (RACT), except (2)(f) (Adopted 9/13/90)
2.660 Standards of Performance for New Stationary Sources (NSPS) (Adopted 12/18/89)
2.670 National Emission Standards for Hazardous Air Pollutants (Adopted 12/5/88)
2.700 Stationary Point Source Emission Test Procedures (Adopted 8/30/89)
2.710 Continuous Emission Monitoring Requirements (Adopted 8/30/89)
2.753 DER Ambient Test Methods (Adopted 5/1/85)
4.020 Definitions (Adopted 3/31/88)
4.021 Transferability of Definitions (Adopted 8/31/88)
4.030 General Prohibitions (Adopted 8/31/88)
4.040 Exemptions (Adopted 8/31/88)
4.050 Procedure to Obtain Permit; Application, except (4)(b) through (4)(j) and 4(n) (Adopted 5/30/91)
4.070 Standards for Issuing or Denying Permits; Issuance; Denial (Adopted 3/28/91)
4.080 Modification of Permit Conditions (Adopted 3/19/90)
4.090 Renewals (Adopted 3/19/90)
4.100 Suspension and Revocation (Adopted 8/31/88)
4.110 Financial Responsibility (Adopted 8/31/88)
4.120 Transfer of Permits (Adopted 3/19/90)
4.130 Plant Operations—Problems (Adopted 8/31/88)
4.160 Permit Conditions, except (16) and (17) (Adopted 10/4/89)
4.210 Construction Permits (Adopted 8/31/88)
4.220 Operation Permits for New Sources (Adopted 8/31/88)
4.520 Definitions (Adopted 7/11/90)
4.530 Procedures (Adopted 3/19/90)
4.540 General Conditions for all General Permits (Adopted 8/31/88)
256.100 Declaration and Intent (Adopted 10/20/86)
256.200 Definitions (Adopted 10/20/86)
256.300 Prohibitions (Adopted 10/20/86)
256.600 Industrial, Commercial, Municipal and Research Open Burning (Adopted 8/26/87)
256.700 Open Burning Allowed (Adopted 10/20/86)

(ii) [reserved]

(g) through (n) [reserved]

(o) North Carolina. (1) Federal requirements.

(i) 40 CFR part 52, subpart II.

(ii) [reserved]

(2) State requirements.

(i) North Carolina Air Pollution Control Requirements. The following sections of subchapters 2D and 2H:

2D.0101 Definitions (Adopted 12/1/89)
2D.0104 Adoption by Reference Updates (Adopted 10/1/89)
2D.0201 Classification of Air Pollution Sources (Adopted 7/1/84)
2D.0202 Registration of Air Pollution Sources (Adopted 6/1/85)
2D.0303 Emission Reduction Plans (Adopted 7/1/84)
2D.0304 Preplanned Abatement Program (Adopted 7/1/88)
2D.0305 Emission Reduction Plan; Alert Level (Adopted 7/1/84)
2D.0306 Emission Reduction Plan; Warning Level (Adopted 7/1/84)
2D.0307 Emission Reduction Plan; Emergency Level (Adopted 7/1/84)
2D.0401 Purpose (Adopted 10/1/89)
2D.0501 Compliance with Emission Control Standards (Adopted 10/1/89)
2D.0502 Purpose (Adopted 6/1/88)
2D.0503 Particulates from Fuel Burning Indirect Heat Exchanger (Adopted 6/1/85)
2D.0505 Control of Particulates from Incinerators (Adopted 7/1/87)
2D.0510 Particulates: Sand, Gravel and Crushed Stone Operations (Adopted 1/1/85)
2D.0511 Particulates, SO_2 from Lightweight Aggregate Processes (Adopted 10/1/89)
2D.0515 Particulates from Miscellaneous Industrial Processes (Adopted 1/1/85)
2D.0516 Sulfur Dioxide Emissions Combustion Sources (Adopted 10/1/89)
2D.0518 Miscellaneous Volatile Organic Compound Emissions (Adopted 2/1/83)
2D.0519 Control of Nitrogen Dioxide Emissions (Adopted 10/1/89)
2D.0520 Control and Prohibition of Open Burning (Adopted 1/1/85)
2D.0521 Control of Visible Emissions (Adopted 1/1/85)
2D.0530 Prevention of Significant Deterioration (Adopted 10/1/89)
2D.0531 Sources in Nonattainment Area (Adopted 12/1/89)
2D.0532 Sources Contributing to an Ambient Violation (Adopted 10/1/89)
2D.0533 Stack Height (Adopted 7/1/87)
2D.0535 Excess Emissions Reporting and Malfunctions, (a) and (f) only. (Adopted 5/1/90)
2D.0537 Control of Mercury Emissions (Adopted 6/1/85)
2D.0601 Purpose and Scope (Adopted 7/1/84)
2D.0602 Definitions (Adopted 7/1/84)
2D.0604 Sources Covered by Implementation Plan Requirements (Adopted 7/1/88)
2D.0606 Other Coal or Residual Oil Burners (Adopted 5/1/85)
2D.0607 Exceptions to Monitoring and Reporting (Adopted 7/1/84)
2D.0901 Defintions (Adopted 12/1/89)
2D.0902 Applicability (Adopted 5/1/90)
2D.0903 Recordkeeping, Reporting, Monitoring (Adopted 12/1/89)
2D.0906 Circumvention (Adopted 1/1/85)
2D.0912 General Provisions on Test Methods and Procedures (Adopted 12/1/89)
2D.0914 Determination of VOC Emission Control System Efficiency (Adopted 1/1/85)
2D.0925 Petroleum Liquid Storage (Adopted 12/1/89)
2D.0933 Petroleum Liquid Storage in External Floating Roof Tanks (Adopted 12/1/89)
2D.0939 Determination of Volatile Organic Compound Vapor Emissions (Adopted 7/1/88)
2D.1101 Purpose (Adopted 5/1/90)
2D.1102 Applicability (Adopted 5/1/90)
2D.1103 Definition (Adopted 5/1/90)
2D.1104 Toxic Air Pollutant Guidelines (Adopted 5/1/90)
2D.1105 Facility Reporting, Recordkeeping (Adopted 5/1/90)
2D.1106 Determination of Ambient Air Concentrations (Adopted 5/1/90)
2D.1107 Multiple Facilities (Adopted 5/1/90)
2D.1108 Multiple Pollutants (Adopted 5/1/90)
2H.0601 Purpose and Scope (Adopted 10/1/89)
2H.0602 Definitions (Adopted 5/1/90)
2H.0603 Applications (Adopted 12/1/89)
2H.0609 Permit Fees (Adopted 8/1/88)
2H.0610 Permit Requirements for Toxic Air Pollutants (Adopted 5/1/90)

(ii) [reserved]

(3) Local requirements.

[FR Doc. 91-28820 Filed 12-4-91; 8:45 am]
BILLING CODE 6560-50-M